	Case 2.00-CV-00490-WEF-SRVV	росипені 33- 1	-4 FIIEU 04/15/2007 Pag STIPULATIONS	e 2 01 24 °
		2	It is stipulated and agreed b	v and
	1 IN THE UNITED STATES DISTRICT COURT	_	petween counsel representing the	
	FOR THE MIDDLE DISTRICT OF ALABAMA 2 NORTHERN DIVISION		he deposition of <b>GRADY DOWLIN</b>	
	US BEVERAGE, INC., Plaintiff,		e taken before Tiffany B. Beasley,	
	JOHN BUSTER WALKER,		Court Reporter and Notary Public in	
	5 II, and TRIDENT CIVIL ACTION NO. MARKETING, INC., Defendants. 2:06-CV-496-SRW	_	he State of Alabama at Large, with	
	JOHN BUSTER WALKER,		ormality of a commission; and all	
	II, and TRIDENT 8 MARKETING, INC., Counterclaim		with respect to other procedural re	
	9 Plaintiffs, Vs.		s waived; that objections to questi	
	10 US BEVERAGE, INC., Counterclaim 11 Defendant,		han objections as to the form of th	
	and 12 GRADY DOWLING		uestions, need not be made at thi	
	KITTRELL, THOMAS  GOING CLARK, III, and		hay be reserved for a ruling at suc	
	NORMAN "BUDDY" TODD, 14 Third Party Defendants.		he deposition may be offered in ev	
			sed for any other purpose by eithe	
	16 * * * * * * *  17 DEPOSITION OF GRADY DOWLING KITTRELI		rovided by the Federal Rules of Ci	
	taken pursuant to notice and stipulation on 18 behalf of the Defendant/Counterclaim	10 p	rocedure.	VII
	Plaintiffs, in the Law Offices of Copeland, 19 Franco, Screws & Gill, 444 South Perry Stre Montgomery, Alabama, before Tiffany B.			and by
	20 Beasley, Certified Court Reporter and Notar Public in and for the State of Alabama at	y 40	It is further stipulated and agr	
	21 Large, on September 15, 2006, commencing at 8:39 a.m.		nd between the parties hereto and	
	23		ritness, that the signature of the w	itiless to
		22	nis deposition is hereby waived.	
		23		
		25		
	o contract of the contract of			4
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1 2	A. Q.	Case 2:06-cv-00496-MEF-SRW 3Document Not without a not without a P&L.  Okay. What about in terms of just sale of	nent 3 1 2		Filed 04/15/2007 Page 3 of 24 39 your I'm talking about slush, and I know you're saying that you're considering fruit
3	<b>.</b>	slush products. How big a chunk of your	3		juice concentrate to be all the same.
•		business was the sale of slush products?	4		Correct.
j.	A.	It's not going to be the major portion at that	5		But in terms of selling juice in a slush
6	7	point, and that's one of the reasons we were	6		product or a product that's intended to be
7		aggressively seeking to get into it.	7		sold to the customer in slush form, compared
8	Q.	Okay. Do you have any idea? Can you give us	8		to a product that's continued to be sold to
9	٠,٠	a rough estimate? 20 percent?	9		the customer in a liquid form, can you break
10	Α.	Again, without a P&L and a specific time	10		down for us the breakdown percentages between
11	• ••	stamp, I couldn't off the top of my head give	11		the two?
12		you that information.	12	A.	I cannot. And, again, I view them as the
13	Q.	I assume your business keeps those type	13		juice concentrate being sold. I don't
14	٠,	records that we could eventually obtain.	14		distinguish the difference as the makeup of
15	A.	Oh, sure.	15		our business. It's the same product
16	Q.	What about let's talk about after	16	Q.	Okay.
17		Mr. Walker came onboard with your company.	17	A.	is what I'm saying. I mean, so I don't
18		How big a component is the sale of slush	18		know how the customer may end up using it.
19		products for your business, let's say today?	19		They may dispense it as a liquid sometimes.
20	A.	Oh, it's a large component today.	20		They may dispense it as a slush sometimes.
21	Q.	Could you put a percentage basis or rough	21		Sometimes we package the same product in
22	٦.	percentage on it today?	22		bag-in-a-box to be dispensed through a
23	Α.	I couldn't give you again, without looking	23		machine. I don't understand the distinction
		38			40
		at financial information, give you a	1		
ı 2		at financial information, give you a	1 2	Q.	you're making. I'm sorry.
2	Q.	anything would just be a stab in the dark.	2	Q.	you're making. I'm sorry. So I guess if your company is putting slush
2	Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality	2	Q.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're
2 3 4	Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business	2 3 4	Q.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine,
2 3 4 5	Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you	2 3 4 5	Q.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish
2 3 4 5 6	Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three	2 3 4 5 6	Q.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are
2 3 4 5 6 7		anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?	2 3 4 5 6 7	Q.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other
2 3 4 5 6 7 8	Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the	2 3 4 5 6		you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?
2 3 4 5 6 7 8 9		anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice	2 3 4 5 6 7 8 9	Q. A.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day
2 3 4 5 6 7 8 9		anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to	2 3 4 5 6 7 8 9		you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those
2 3 4 5 6 7 8 9 10		anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up	2 3 4 5 6 7 8 9 10		you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately
2 3 4 5 6 7 8 9 10 11	Α.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.	2 3 4 5 6 7 8 9 10 11		you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in
2 3 4 5 6 7 8 9 10 11 12 13		anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice	2 3 4 5 6 7 8 9 10 11 12 13	Ä.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Α.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Ä.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice, you know, not slushy machine or	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Ā. Q. A.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is how I view it versus equipment.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Α.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice, you know, not slushy machine or Yeah. The juice business is the majority of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Ä.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is how I view it versus equipment.  Has US Beverage ever been in the business of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice, you know, not slushy machine or	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Ā. Q. A.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is how I view it versus equipment.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice, you know, not slushy machine or Yeah. The juice business is the majority of our business. It's always been the focus of our business.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Ā. Q. A.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is how I view it versus equipment.  Has US Beverage ever been in the business of creating promotional materials or POS
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice, you know, not slushy machine or  Yeah. The juice business is the majority of our business. It's always been the focus of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Ä. Q. A.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is how I view it versus equipment.  Has US Beverage ever been in the business of creating promotional materials or POS materials for customers?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 21	A. Q.	anything would just be a stab in the dark.  Okay. There's what about proportionality in terms of comparing your slush business before Mr. Walker came onboard with you compared to today. Two times greater? Three times greater?  Well, again, I guess I get confused with the term "slush." It's still just juice concentrate. It's all juice concentrate to me, so I see it as product business makes up the majority of our business.  Well, in terms of your sales of fruit juice concentrate, sitting here today, how much of the sales would you attribute to just the sale of just product that ends up just being juice, you know, not slushy machine or Yeah. The juice business is the majority of our business. It's always been the focus of our business.  Okay. And, again, I'm trying to ask you to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Ä. Q. A.	you're making. I'm sorry.  So I guess if your company is putting slush machines into convenience stores, when you're selling that juice to go into a slush machine, your accountants don't in some way distinguish so you can find out how much your sales are from the slush machine compared to other sales?  Sure. We can distinguish whether it was a day care, a C-store, a ballpark or any of those things. I cannot I cannot accurately depict that today, though, without a P&L in front of me.  Okay.  Because, again, when I look at numbers, I look at it as juice concentrate. Product sales is how I view it versus equipment.  Has US Beverage ever been in the business of creating promotional materials or POS materials for customers?  Have we ever been in the business of that? I

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1		could not complete objectives and make	1		family what was going to be best as well.
2		decisions effectively with him being absent on	2		Tough position for the company to be in to
3		a daily basis. Now, true, he would still need	3		elevate a humanistic need over the company's
1.04		to travel and do the things he'd need to do,	4		need, and I feel we made a mistake in allowing
		but he would need to be subservient to the	5		that to happen at the time. But then we came
6		corporate needs, as all of us should be as	6		back after the purchase of his home, discussed
7		corporate officers. Those discussions	7		it at length, and had even made a proposal to
8		happened often.	8		offset the losses he may incur in selling his
9	Q.	Was there any minutes at the board of	9		house in a down market if he would agree to
10		directors' meetings to reflect any of those	10		move.
11		discussions?	11	Q.	Any of those discussions in writing?
12	A.	If I'm not mistaken, there may be some minutes	12	A.	I'll have to check.
13		from one where John Walker did agree and gave	13	Q.	Specifically the offer to offset the sale of
14		a designated time line that he would move	14		his house. Was that in writing?
15		back.	15	A.	Again, I'll have to look and see. We had so
16	Q.	Okay. Could you search your records and	16		many discussions there. I mean, it was almost
17	A.	Be glad to.	17		an on-and-on on the phone type of discussion,
18	Q.	produce those to your attorney so he can	18		because, again, he was in Texas.
19		produce those to us? And I think you also	19	Q.	Did Mr. Walker discuss with you what prompted
20		indicated that at one point, you said,	20		him and his wife to move to Texas, why they
21		Mr. Walker at least one point, Mr. Walker	21		were in Texas?
22		agreed to move back to Alabama. Would you	22	A.	The only knowledge that I had of why he was in
23		describe to us when this disagreement occurred	23		Texas was because of a job that Tiffany
		78			80
1		and what you recall about that?	1		possessed.
2	A.	I recall early on Mr. Walker engaging in these	2	Q.	And is Tiffany Mr. Walker's wife?
3		conversations that he recognized that there	3	A.	Yes.
4		was being problems being caused by his	4	Q.	What did you know about that job?
5		absence; that we could not have the synergies	5	A.	That her father-in-law was the excuse me,
6		needed to run the company; and that we were	6		her step-father had a position that had given
7		off sync on what the company felt or the	7		her title to a position through nepotism.
8		quorum felt was the objectives of sales versus	8	Q.	When you say "nepotism," is this your opinion
9		what he felt because of his personal needs.	9		or is this what Mr. Walker
10		And he even at that time had addressed that he	10	A.	That was the way it was described to me.
11		felt if he was here with us every day, it	11	Q.	Do you recall Mr. Walker using the term
12					
		would benefit him because he felt like he	12		"nepotism" to refer to his wife's job?
13		would benefit him because he felt like he wasn't a part of the company at times. Both	12 13	A.	"nepotism" to refer to his wife's job?  Oh, I think he probably used I cannot
13 14				A.	•
		wasn't a part of the company at times. Both	13	A.	Oh, I think he probably used I cannot
14		wasn't a part of the company at times. Both sides of the table felt it was imperative for	13 14	A.	Oh, I think he probably used I cannot remember the gentleman's name, but because
14 15	Q.	wasn't a part of the company at times. Both sides of the table felt it was imperative for him to come back and be active in the	13 14 15	A.	Oh, I think he probably used I cannot remember the gentleman's name, but because so-and-so was her step-father, you know, he
14 15 16	Q. A.	wasn't a part of the company at times. Both sides of the table felt it was imperative for him to come back and be active in the business.	13 14 15 16	A. Q.	Oh, I think he probably used I cannot remember the gentleman's name, but because so-and-so was her step-father, you know, he set her up with this. She may be qualified.
14 15 16 17		wasn't a part of the company at times. Both sides of the table felt it was imperative for him to come back and be active in the business.  And when did these discussions occur?	13 14 15 16 17		Oh, I think he probably used I cannot remember the gentleman's name, but because so-and-so was her step-father, you know, he set her up with this. She may be qualified. I can't answer that.
14 15 16 17 18	A.	wasn't a part of the company at times. Both sides of the table felt it was imperative for him to come back and be active in the business.  And when did these discussions occur?  These discussions occurred pretty early on.	13 14 15 16 17		Oh, I think he probably used I cannot remember the gentleman's name, but because so-and-so was her step-father, you know, he set her up with this. She may be qualified. I can't answer that.  Okay. And normally and when you use
14 15 16 17 18	A.	wasn't a part of the company at times. Both sides of the table felt it was imperative for him to come back and be active in the business.  And when did these discussions occur?  These discussions occurred pretty early on.  Well, how long after the acquisition? Are you	13 14 15 16 17 18 19		Oh, I think he probably used I cannot remember the gentleman's name, but because so-and-so was her step-father, you know, he set her up with this. She may be qualified.  I can't answer that.  Okay. And normally and when you use someone throws out the term "nepotism,"
14 15 16 17 18 19	A. Q.	wasn't a part of the company at times. Both sides of the table felt it was imperative for him to come back and be active in the business.  And when did these discussions occur?  These discussions occurred pretty early on.  Well, how long after the acquisition? Are you talking months or years or	13 14 15 16 17 18 19		Oh, I think he probably used I cannot remember the gentleman's name, but because so-and-so was her step-father, you know, he set her up with this. She may be qualified. I can't answer that.  Okay. And normally and when you use someone throws out the term "nepotism," usually it's inferring someone is not

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1 Q. Are yall currently in the ice cream business? 2 A. No. 3 Q. Is that something you used to sell? 4 Well, to become the Granita distributor, you had to take the full line. They've shifted their mix of things since we've gone on with them because of acquisitions they made. 5 Q. How long ago did you stop being the Granita distributor through company stock? 6 We still are. 7 We will are? But the exclusive relationship 11 company assets, other than these documents you were talking about, exclusive 12 you were talking about, exclusive 13 distributorship. 10 Q. To u shill are? But the exclusive relationship 11 company assets, other than these documents you said you're going to get to your attorney? 11 Q. You still are? But the exclusive relationship 11 company assets, other than these documents you said you're going to get to your attorney? 11 Q. You still are? But the exclusive relationship 11 company assets, other than these documents you said you're going to get to your attorney? 12 A. I would have to check with Carpiglani on that. 14 Q. I'm just asking any other evidence or any other proof that you know, that supports your contention that hir. Walker was using US Beverage assets to benefit Trident Marketing. 12 A. Posob were already a dealer before 20 how they redefined what a distributor, what a 22 dealer, what a rep was. 120 Q. Was that before or after John came onboard. 1 Q. Was were we were already a dealer before 3 John Walker? 2 A. Before John came onboard. 3 A. We were we were already a dealer before 3 John Came onboard. 4 Q. And you don't recall how long after John came onboard. 5 Q. But your exclusive relationship changed? 11 A. Posoboty we relinquished the probably four months ago. But, again, they shifted what they described as a dealer/repor distributor. 13 A. Probably we relinquished the probably four months ago. But, again, they shifted what they described as a dealer/repor distributor. 14 A. Probably we relinquished the probably four months ago. But, again, they shifted what th			Case 2:06-cv-00496-MEF-SRW 12Docum	ent :	33-4	Filed 04/15/2007 Page 5 of 24 127
2 A. No. 3 Q. Is that something you used to sell? 4 A. Well, to become the Granita distributor, you had to take the full line. They've shifted their mix of things since we've gone on with them because of acquisitions they made. 5 Q. How long ago did you stop being the Granita distributor through company stock? 6 distributor through company stock? 7 A. It will take some time. 8 Q. Veah. 10 A. We still are. 11 Q. You still are? But the exclusive relationship 11 you were talking about, exclusive 12 you were talking about, exclusive 12 you were talking about, exclusive 13 distributorship. 14 A. I would have to check with Carpigiani on that. 15 Q. Do you have any idea - 15 you have any idea - 16 you have any idea - 17 you have any idea - 17 you have any idea - 18 you have any idea - 19 you have any	1	O				3
3 Q. Is that something you used to sell?  A Well, to become the Granita distributor, you had to take the full line. They've shifted their mix of things since we've gone on with them because of acquisitions they made.  8 Q. How long ago did you stop being the Granita distributor through company stock?  9 A. We still are.  10 A. We still are.  11 Q. You still are? But the exclusive relationship 11 2 you were taiking about, exclusive 12 you were taiking about, exclusive 13 distributorship.  13 A. I would have to check with Carpigiani on that.  14 A. I would have to check with Carpigiani on that.  15 Q. Do you have any idea  16 A. They've changed the way they did their business. I couldn't they've been through several acquisitions. I couldn't  18 Q. Are we talking several years ago or months ago or any idea?  19 A. I couldn't give you an accurate answer as to how they redefined what a distributor, what a dealer, what a rep was.  120 Q. Was that before or after John came onboard, 2 John Walker?  3 A. We were we were already a dealer before 3 John came onboard.  4 Q. Was were we were already a dealer before 3 A. Weah.  9 Q. Was were were already a dealer before and a poly of the country of the came onboard.  10 Q. And we were already a dealer before 3 A. Weah.  10 Q. And we were already a dealer before 3 A. Weah.  10 Q. And we were already a dealer before 3 A. Weah.  10 Q. And we were already a dealer before 3 A. Weah.  10 Q. And well are you still an exclusive dealer when he and probably the relinquished the probably four months ago. But, again, they shifted what they described as a dealer/rep or distributor.  10 Q. And you don't recall how long after John came onboard.  11 Q. And you don't recall how long after John came onboard.  12 A. Pobably we relinquished the probably four months ago. But, again, they shifted what they described as a dealer/rep or distributor.  13 Q. Was any records or documents that they described as a dealer/rep or distributor.  14 Q. Do you have any records or documents th			•	-	Δ	_
A. Well, to become the Granita distributor, you had to take the full line. They've shifted the firm lik of things since we've gone on with them because of acquisitions they made.  8 Q. How long ago did you stop being the Granita distributor through company stock?  9 distributor through company stock?  10 A. We still are.  10 Q. You still are? But the exclusive relationship you were taking about, exclusive and the company assets, other than these documents you said you're going to get to your attorney?  13 distributorship.  14 A. I would have to check with Carpigiani on that.  15 Q. Do you have any idea						
had to take the full line. They've shifted their mix of things since we've gone on with the because of acquisitions they made.  Q. How long ago did you stop being the Granita distributor through company stock?  A. We still are.  D. You still are? But the exclusive relationship you were talking about, exclusive distributorship.  A. I would have to check with Carpigiani on that.  A. I would have to check with Carpigiani on that.  A. I would have to check with Carpigiani on that.  A. I would have to check with Carpigiani on that.  A. They've changed the way they did their business. I couldn't they've been through several acquisitions. I couldn't  19 Q. Are we talking several years ago or months ago or any idea?  Q. Are we talking several years ago or months ago or any idea?  Q. Was that before or after John came onboard, John Walker?  Q. Was that before or after John came onboard, John Walker?  Q. Was that before or after John came onboard, Q. But your exclusive relationship?  A. Before John came onboard.  A. Before John came onboard.  A. Ween- we were already a dealer before John came onboard.  A. Peah.  D. Q. Ware you still an exclusive dealer when he came onboard?  A. Peah.  D. Q. Okay. Is it your contention that Carpigiani did anything wrong in selling equipment to did anything wrong						
their mix of things since we've gone on with them because of acquisitions they made.  Q. How long ago did you stop being the Granita distributor through company stock?  Q. We still are.  10 A. We still are.  11 Q. You still are? But the exclusive relationship you were talking about, exclusive distributorship.  12 you were talking about, exclusive distributorship.  13 A. I would have to check with Carpigiani on that.  14 A. I would have to check with Carpigiani on that.  15 Q. Do you have any idea		Λ.				
them because of acquisitions they made.  Q. How long ago did you stop being the Granita distributor through company stock?  Me still are.  We still are.  U. You still are? But the exclusive relationship of with the property of the propert	6			_		
8 Q. How long ago did you stop being the Granita 9 distributor through company stock? 10 A. We still are? 11 Q. You still are? But the exclusive relationship 12 you were talking about, exclusive 13 distributorship. 14 A. I would have to check with Carpigiani on that. 15 Q. Do you have any idea 16 A. They've changed the way they did their 17 business. I couldn't they've been through 18 several acquisitions. I couldn't 19 Q. Are we talking several years ago or months ago 19 or any idea? 20 or any idea? 21 A. I couldn't give you an accurate answer as to 10 how they redefined what a distributor, what a 22 dealer, what a rep was. 23 Q. Was that before or after John came onboard, 24 John Walker? 25 Q. But your exclusive relationship? 26 A. Before John came onboard. 27 Q. We were we were already a dealer before 28 John came onboard. 29 Q. Was ure exclusive relationship? 30 Q. And you don't recall how long after John came 31 O. And you don't recall how long after John came 32 O. Okay. It your contention that Mr. Walker 33 A. Yeah. 34 Q. Okay. Is they were relationship changed? 35 Q. Okay. It your contention that Carpigiani 36 did anything wrong in selling equipment to 37 Do you have any records or documents that 38 exclusivity arrangements with your company? 39 A. Oo you have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any records or documents that 39 Q. Obay have any recor	_		_			
distributor through company stock?  A. We still are.  10 Q. Do you have any other proof of him using company assets, other than these documents you said you're going to get to your attorney?  MR. GILL: Object to the form.  MR. GILL: Object to form.  MR. GILL		0	-	-		
10 A. We still are. 11 Q. You still are? But the exclusive relationship 12 you were talking about, exclusive 13 distributorship. 14 A. I would have to check with Carpigiani on that. 15 Q. Do you have any other proof of him using 16 A. They've changed the way they did their 17 business. I couldn't they've been through 18 several acquisitions. I couldn't 19 Q. Are we talking several years ago or months ago 19 or any idea? 20 or any idea? 21 A. I couldn't give you an accurate answer as to 22 how they redefined what a distributor, what a 23 dealer, what a rep was. 24 John Walker? 25 Q. Was that before or after John came onboard, 26 John came onboard. 27 John came onboard. 28 But your exclusive relationship? 39 A. Were you still an exclusive dealer when he 29 C. And you don't recall how long after John came 29 A. Yeah. 30 Q. And you don't recall how long after John came 31 onboard that that relationship changed? 31 did anything wrong in selling equipment to 32 they or exclusive relationship changed? 39 A. Yeah. 30 Q. Kay, I sit your contention that Carpigiani 30 did anything wrong in selling equipment to 31 they described as a dealer/rep or distributor. 32 dealer, what a rep was. 34 told you that Mr. Walker was using US Beverage 35 told you that Mr. Walker was using US Beverage 36 told you that Mr. Walker was using US Beverage 36 told you that Mr. Walker was using US Beverage 37 assets to further Trident Marketing. 38 told you that Mr. Walker was using US Beverage 39 A. Yeah. 39 A. Yeah. 40 Q. And you don't recall how long after John came 41 onboard that that relationship changed? 41 they described as a dealer/rep or distributor. 42 they described as a dealer/rep or distributor. 43 they described as a dealer/rep or distributor. 44 they described as a dealer/rep or distributor. 45 Q. Okay. Is it your contention that Carpigiani 46 did anything wrong in selling equipment to 47 John? Did they violate any sort of the 48 exclusivity arrangements with your company? 49 A. No. 40 Q. And you don't recall how long after		Q.				•
you were talking about, exclusive relationship you were talking about, exclusive distributorship.  A. I would have to check with Carpigiani on that.  A. They've changed the way they did their business. I couldn't they've been through several acquisitions. I couldn't they'v		۸		_		
you were talking about, exclusive distributorship.  A. I would have to check with Carpigiani on that. 14 A. I would have to check with Carpigiani on that. 15 Q. Do you have any idea 16 A. They've changed the way they did their business. I couldn't they've been through several acquisitions. I couldn't 18 several acquisitions. I couldn't 19 Q. Are we talking several years ago or months ago or any idea? 20 Are we talking several years ago or months ago or any idea? 21 A. I couldn't give you an accurate answer as to how they redefined what a distributor, what a 22 dealer, what a rep was. 23 Q. Was that before or after John came onboard, 24 John Walker? 25 John Walker? 26 A. Before John came onboard. 27 Q. Were you still an exclusive dealer when he came onboard? 28 A. Yeah. 39 A. Yeah. 40 Q. And you don't recall how long after John came onboard that that relationship changed? 41 A. Probably we relinquished the probably four they described as a dealer/rep or distributor. 41 Co. Clay. Well, let's start with statements. Who 29 And you don't recall how long after John came onboard that that relationship changed? 30 Q. Kay. Is it your contention that Carpigiani did did anything wrong in selling equipment to 31 G. Q. Kay. Is it your contention that Carpigiani did did anything wrong in selling equipment to 31 G. Do you have any records or documents that 32 would show or, I guess, back up your 33 G. Do you have any records or documents that 34 would show or, I guess, back up your 35 G. Do you have any records or documents that 36 would show or, I guess, back up your 37 G. Do you have any records or documents that 38 corporate officer and a shareholder, we had to protect the company, not to mention several discussions with Mr. Walker during the time of the negotations of trying to resolve this					Œ.	
distributorship.  A. I would have to check with Carpigiani on that.  A. I would have to check with Carpigiani on that.  A. I would have to check with Carpigiani on that.  A. They've changed the way they did their business. I couldn't they've been through several acquisitions. I couldn't they've been through several acquisitions of the form.  If m just asking any other evidence or any countention that forely been through a several acquisitions of the Mr. Walker was using US  Beverage assets to benefit Trident Marketing.  MR. GIL: Object to the form.  If mund have to acquisitions of the form.  If mund have to acquisitions of the firth Mr. Walker was using Us.  It wo		Œ.	·			
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1		conflict.	1		those states that was highlighted as a
2	Q.	Did did Mr. Walker tell you he was using	2		territory that we were trying to gain access
3		company assets to benefit any other company?	3		to, and we actively sought business in that
,•	A.	He may not have described it as that, but when	4		state through distributors or direct business.
(		he would say he used our gas to go to North	5		Not always successful, but it was the
6		Carolina and there was a gas charge, then,	6		intention of us to do that.
7		obviously, he's telling me that.	7	Q.	And these goals we're talking about, are they
8	Q.	Okay. And are you saying the trip or trip	8	-4-	written form? Is there any written document
9	٠.	or trips to North Carolina you're describing	9		outlining this goal?
10		are trips to benefit his own enterprises	10	Α.	There may be some notes, but it was also
11		rather than yours?	11	7 11	outlined in that original Cool Tropics
12	Α.	Yes.	12		contract.
13	Q.	Does US Beverage have any business in North	13	Q.	And do you still have a copy of the Cool
	Œ.	Carolina?	14	Œ.	Tropics contract?
14	۸	• • • • • • • • • • • • • • • • • • • •	15	Α.	I don't know if I do or don't.
15	Α.	We have	16	Q.	
16	Q.	You have currently?		u.	Would Mr. Cooper have been the lawyer that had
17	Α.	We do currently.	17	٨	developed that contract?
18	Q.	Okay. What sorts of business do you have in	18	Α.	That would have been Cool Tropics' attorney.
19		North Carolina currently?	19	Q.	Okay.
20	A.	We have some schools in North Carolina,	20	A.	Frank Masabny (phonetic) would be in
21	_	actually.	21	_	possession of that or anything related.
22	Q.	How many schools?	22	Q.	Can you search your records and see if you can
23	Α.	I couldn't answer that.	23		find the Cool Tropics' contract?
		130		_	132
	Q.	How recent well, how long have you had	1	Α.	Uh-huh.
2		these schools as customers of US Beverage?	2	Q.	And if so, provide it to your attorney,
3	A.	Oh, these are new customers from current	3		please?
4		business.	4	A.	Yes.
5	Q.	When you say "new," like, within the last	5	Q.	Who are the distributors in North Carolina you
6		three or four months or	6		said you were trying to do business through?
7	A.	Yeah.	7	A.	We met with a let's see, I cannot remember.
8	Q.	Okay. Any other customers in North Carolina	8		We had sold to a gentleman in Virginia who
9		other than these schools we're talking about?	9		actually came into North Carolina, was my
10	A.	As of to date, no.	10		belief. I cannot remember the name of his
11	Q.	What about in the past? Any other what	11		Tropical Paradise, I believe was the name of
12		type of business has your company done in	12		his company maybe. I can't remember the name
13		North Carolina in the past?	13		of it. There was a JD Carr & Associates that
14	A.	We have sold to other distributors, again,	14		we had met with. There was a Jeff Bernstein,
15		seeking to grow our territory that we could	15		I believe, was the gentleman's name.
16		cover. North Carolina was slated as one of	16		Books-A-Million had locations in North
17		the states that we wanted to develop.	17		Carolina.
18	Q.	How was it slated as one of the states you	18	Q.	These discussions you had, can you tell us
19		wanted to develop?	19		roughly when they occurred? For instance, JD
	Α.	In the original goals of this company, it was	20		Carr & Associates?
21		to have a 14-state distribution for US	21	A.	That's within the last two years.
22		Beverage that US Beverage controlled and	22	Q.	Did you actually sell any product through JD
23		operated in, and North Carolina was one of	23		Carr?
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1	Α.	Uh-huh.	1		were supposed to be paid equally?
2	Q.	the customer buys \$20,000 worth of slush or	2	Α.	Provided there was
3	Q.	whatever, juice products, three months later	3	7.	MR. GILL: Object to the form.
		decides to become another to associate with	4	A.	equal participation.
()			5	Q.	Well, we'll go through it. Let's find that
		another slush company; \$20,000 worth of		Q.	portion of the contract.
6		product that had been bought and paid for.	6 7		MR. GILL: Are you talking about
7		Would Mr. Walker have retained a commission			•
8		for that?	8		Page 11? Is that what you're
9	A.	It would depend on if Mr. Walker maintained	9		talking about? If that's not
10		the account. There's more to it than just	10		what you're talking about, I
11		signing the initial customer profile. That	11	_	apologize.
12		means constant maintenance and contact with	12	Q.	Okay. Yeah. I believe what's Bates-stamped
13		the customer; that means visitations to the	13		at the bottom US Beverage 011 and US Beverage
14		company; that means solving service-related	14		012 on Plaintiff's (sic) Exhibit 1. Let's
15		problems for the customer; that means taking	15		just if you don't mind for the record just
16		orders from the customer when necessary, when	16		read numbered Paragraph 5. Just read it
17		they're short-falling; that means delivering	17		aloud, if you don't mind.
18		that product to that customer during a	18	A.	Okay. (As read:) The stockholders should
19		shortfall, not alienating the customer.	19		jointly manage the business.
20	Q.	Who made the decision as to whether Mr. Walker	20		(Off-the-record discussion.)
21		had maintained the customer?	21	A.	(As read:) Any increase in compensation shall
22	A.	That would probably have fallen on the	22		require a two-thirds vote of the shares of
23		responsibility of Mr. Clark, because all	23		outstanding stock in the corporation. Any
		142			144
- "[		service negotiations and all delivery	1		increase shall apply to all stockholders
2		service negotiations and all delivery shortfalls come through him.	2		increase shall apply to all stockholders equally. Any decrease will require unanimous
	Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where	2 3		increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding
2	Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for	2		increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.
2	Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where	2 3	Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having
2 3 4	Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I	2 3 4	Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation. Okay. Did Mr. Walker consent to having being changed to this sales commission
2 3 4 5		service negotiations and all delivery shortfalls come through him.  Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission?	2 3 4 5	Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having
2 3 4 5 6		service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I	2 3 4 5 6	A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation. Okay. Did Mr. Walker consent to having being changed to this sales commission
2 3 4 5 6 7		service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid	2 3 4 5 6 7		increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?
2 3 4 5 6 7 8	A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed.	2 3 4 5 6 7 8 9	A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.
2 3 4 5 6 7 8	A.	service negotiations and all delivery shortfalls come through him.  Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission?  I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed.  Okay. But were there instances where product	2 3 4 5 6 7 8 9	A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation. Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed? Absolutely. He did?
2 3 4 5 6 7 8 9	A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that	2 3 4 5 6 7 8 9	A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation. Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed? Absolutely. He did? Yes, he did.
2 3 4 5 6 7 8 9 10	A. Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained?	2 3 4 5 6 7 8 9 10 11	A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation. Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed? Absolutely. He did? Yes, he did. It's your testimony today that he agreed to
2 3 4 5 6 7 8 9 10 11	A. Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't	2 3 4 5 6 7 8 9 10 11	A. Q. A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that
2 3 4 5 6 7 8 9 10 11 12 13	A. Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately.	2 3 4 5 6 7 8 9 10 11 12 13	A. Q. A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.
2 3 4 5 6 7 8 9 10 11 12 13 14	A. Q.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately. You don't have any idea? I'm not asking	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Q. A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Q. A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately. You don't have any idea? I'm not asking you if you could just quantify it for us.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Q. A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. Q. A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately. You don't have any idea? I'm not asking you if you could just quantify it for us. I could not.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. Q. A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?  I will have to search. Probably not.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Q. A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately. You don't have any idea? I'm not asking you if you could just quantify it for us. I could not. Did the the agreement that we have here	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Q. A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?  I will have to search. Probably not.  Did Mr. Walker agree to allow you and Mr
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q. A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately. You don't have any idea? I'm not asking you if you could just quantify it for us. I could not. Did the the agreement that we have here before in Plaintiff's (sic) Exhibit 1 and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q. A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?  I will have to search. Probably not.  Did Mr. Walker agree to allow you and Mr you and Mr. Clark to increase your salaries in
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q. A.	service negotiations and all delivery shortfalls come through him. Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission? I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed. Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained? Without records in front of me, I couldn't answer that accurately. You don't have any idea? I'm not asking you if you could just quantify it for us. I could not. Did the the agreement that we have here before in Plaintiff's (sic) Exhibit 1 and 2, did it provide that the partners of US	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A. Q. A.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?  I will have to search. Probably not.  Did Mr. Walker agree to allow you and Mr you and Mr. Clark to increase your salaries in October of 2003?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A.	service negotiations and all delivery shortfalls come through him.  Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission?  I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed.  Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained?  Without records in front of me, I couldn't answer that accurately.  You don't have any idea? I'm not asking you if you could just quantify it for us. I could not.  Did the the agreement that we have here before in Plaintiff's (sic) Exhibit 1 and 2, did it provide that the partners of US Beverage, the three of y'all were supposed to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Q. A. Q. A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?  I will have to search. Probably not.  Did Mr. Walker agree to allow you and Mr you and Mr. Clark to increase your salaries in October of 2003?  MR. GILL: Object to the form.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A. Q.	service negotiations and all delivery shortfalls come through him.  Okay. Are you aware of any situations where there was product sold through Mr. Walker for which he's not been paid commission?  I would have to look at the records. I believe that Mr. Walker has been paid commissions for what he's owed.  Okay. But were there instances where product was sold but there was a decision made that the customer had not been maintained?  Without records in front of me, I couldn't answer that accurately.  You don't have any idea? I'm not asking you if you could just quantify it for us.  I could not.  Did the the agreement that we have here before in Plaintiff's (sic) Exhibit 1 and 2, did it provide that the partners of US Beverage, the three of y'all were supposed to be paid equally?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Q. A. Q. A. Q. A. Q.	increase shall apply to all stockholders equally. Any decrease will require unanimous vote of all shareholders to the outstanding stock of the corporation.  Okay. Did Mr. Walker consent to having being changed to this sales commission arrangement we've just discussed?  Absolutely.  He did?  Yes, he did.  It's your testimony today that he agreed to that Absolutely.  Do you have any paperwork or documents to show his agreement to that?  I will have to search. Probably not.  Did Mr. Walker agree to allow you and Mr you and Mr. Clark to increase your salaries in October of 2003?  MR. GILL: Object to the form.  Yes, he did.

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1		those during the break, lunch	1		to eliminate his travel so that he could be
2		break.	2		more effective.
3		(The referred-to document was	3		Okay. And there wasn't any discussion at that
1		marked for identification as	4		point of him going on Rio Grande's payroll and
	_	Defendants' Exhibit No. 3.)	5		dropping off of US Beverage's payroll?
6	Q.	But and, again, Mr. Kittrell, is the	6		There was that discussion, yes.
7	_	outline you were just discussing?	7		Are you saying there wasn't a decision made
8	Α.	This this was one of the outlines that	8		that day?
9	_	was that was utilized that day, I believe.	9	A.	I'm saying that John Walker told us at that
10	Q.	Are there any other outlines that	10		meeting that he would not participate, but he
11	Α.	I don't recall.	11		would agree to not taking a salary, but he
12	Q.	Was this produced before or after the meeting?	12		would not work without getting compensated but
13	A.	This was produced prior to the meeting. This	13		expected us to continue to maintain the
14		was a coverage of my recommended action plan,	14		profitability of the company and work every
15		is what this was.	15		day while he did not participate.
16	Q.	Okay. Were there any notes or minutes	16	Q.	Are those the exact words he used?
17		produced as a result of the meeting?	17	A.	I cannot say that.
18	A.	There was probably notes taken by all three of	18	Q.	Did he tell you he refused to participate in
19		us on that day. It was a very lengthy	19		US Beverage?
20		meeting, and what has happened to everyone's	20	A.	He said, if I don't get paid, I don't work.
21		notes on that, I couldn't tell you.	21	Q.	Is that a fair statement?
22	Q.	Are there any official notes or corporate	22	A.	No.
23		records taken?	23	Q.	I mean, we talked yesterday about hats;
		154			156
	Λ	A control to a control to the state of the s			though many bate that accale wasy
•	A.	Again, I will have to say that Tom Clark	1		there's many hats that people wear,
2	A.	usually presided as the secretary and	1 2		corporate corporate officer, shareholder,
	Α.		_		
2	Α.	usually presided as the secretary and	2		corporate corporate officer, shareholder,
2	Α.	usually presided as the secretary and treasurer of the meetings and usually took	2 3	A.	corporate corporate officer, shareholder, employee. Do you expect employees to work
2 3 4	Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't	2 3 4	A.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?
2 3 4 5		usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.	2 3 4 5	A.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a
2 3 4 5 6		usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the	2 3 4 5 6	A.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a
2 3 4 5 6 7	Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?	2 3 4 5 6 7	Α.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can
2 3 4 5 6 7 8	Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.	2 3 4 5 6 7 8	A.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that
2 3 4 5 6 7 8 9	Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio	2 3 4 5 6 7 8 9	Α.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work
2 3 4 5 6 7 8 9	Q. A. Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?	2 3 4 5 6 7 8 9 10 11 12		corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is
2 3 4 5 6 7 8 9 10	Q. A. Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.	2 3 4 5 6 7 8 9 10	A. Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work
2 3 4 5 6 7 8 9 10 11	Q. A. Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that	2 3 4 5 6 7 8 9 10 11 12		corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.
2 3 4 5 6 7 8 9 10 11 12 13	Q. A. Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not	2 3 4 5 6 7 8 9 10 11 12 13		corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th
2 3 4 5 6 7 8 9 10 11 12 13 14	Q. A. Q. A. Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16		corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. A. Q. A. Q.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?  There was not a decision made that day, no, other than his own.  Okay. And I may be misunderstanding what you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of US Beverage?  I would have to say no, he didn't agree to permanently drop off.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. A. Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?  There was not a decision made that day, no, other than his own.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of US Beverage?  I would have to say no, he didn't agree to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. A. Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?  There was not a decision made that day, no, other than his own.  Okay. And I may be misunderstanding what you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of US Beverage?  I would have to say no, he didn't agree to permanently drop off.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. A. Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?  There was not a decision made that day, no, other than his own.  Okay. And I may be misunderstanding what you testified earlier. I thought you testified	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of US Beverage?  I would have to say no, he didn't agree to permanently drop off.  Was there any discussion of this decision to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. A. Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?  There was not a decision made that day, no, other than his own.  Okay. And I may be misunderstanding what you testified earlier. I thought you testified that a decision was made that Mr. Walker	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of US Beverage?  I would have to say no, he didn't agree to permanently drop off.  Was there any discussion of this decision to stop paying the three members, or three
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. A. Q. A.	usually presided as the secretary and treasurer of the meetings and usually took notes. Where those have gotten to, I couldn't attest.  Okay. Did John Walker agree to handle the day-to-day affairs of Rio Grande?  No.  Did he agree to go on the payroll of Rio Grande?  No.  Was there a decision made at that on that meeting, that day, that Mr. Walker would not return to the payroll of US Beverage?  There was not a decision made that day, no, other than his own.  Okay. And I may be misunderstanding what you testified earlier. I thought you testified that a decision was made that Mr. Walker should go take over working for Rio Grande and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q.	corporate corporate officer, shareholder, employee. Do you expect employees to work without being paid?  I expect a fiduciary to either answer to a cash call or elect that he be diluted for a cash call, resign as an officer so that we can place someone in fact who would carry on that fiduciary. But I do expect someone who has made a capital investment in something, who is an officer, shareholder, and employee, to work at all means to save the investment.  Did Mr. Walker agree during this July 19th meeting to permanently drop off the payroll of US Beverage?  I would have to say no, he didn't agree to permanently drop off.  Was there any discussion of this decision to stop paying the three members, or three shareholders, of US Beverage as being any

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1		produce this on our behalf, not to go create a	1	A.	Oh, yeah. I mean, I was aware of the project.	rd.
2		competing entity to us to restrain our growth,	2		And I'm assuming from the title it went to day	
3		which he should have been a part of	3		cares. I don't know specifically which zip	
		participating in our growth, not restricting	4		codes or where it got targeted too, though.	
		it.	5	Q.	Okay. But is this part would this have	
6	Q.	Did Mr. Clark disagree with you on those	6		been part of this project we talked about	
7		objections?	7		earlier to market Juice Alive brand juice to	
8	A.	I think that Mr. Clark this is my	8		day cares?	
9		opinion took the position that John Walker	9		MR. GILL: Object to the form.	
10		had some knowledge of our business that he was	10	A.	This is certainly a marketing piece created to	
11		willing to put out for hire and that he would	11		advertise to day cares the Juice Alive brand.	
12		damage us. And Mr. Clark was very my	12	Q.	And you recognize this as being part of the	
13		opinion again reserved in creating any sort	13		initial project we've talked about, when we	
14		of riff that would cause John Walker to take	14		talked before about Mr. Walker approaching you	-3
15		and assist our competitors in hurting us. We	15		about a about marketing to day cares in	154
16		felt we were being extorted and coerced.	16		certain states	
17	Q.	Well, let's flip through the second page.	17	A.	Uh-huh.	
18		Have you seen that document before?	18	Q.	and you and they were going to	
19	A.	These are two separate documents.	19		Trident Marketing was going to market to day	
20	Q.	I'm going to ask about the second page.	20		cares in other states and that we talked about	
21	A.	I've not I've not seen this one.	21		Mr. Hamner helping to create some logos and so	
22	Q.	You're not aware of that ever having seen	22		forth and materials?	
23		that document?	23	A.	Correct.	
		194			196	
- 1	· А.	I have no recollection of this document.	1	Q.	And I'm asking you if you recognize this as	
2	Q.	What does it appear to be?	2		being one of the pieces of material that was	
3	A.	Appears to be a flyer.	3		created by Mr. Hamner as part of that initial	Z.
4	Q.	For what?	4		project to market to day cares.	
5	A.	Juice Alive.	5		MR. GILL: Object to the form.	
6	Q.	What's the contact information at the bottom?	6	Α.	I do not recognize this being the work of	
7	Α.	Www.juicealive.com.	7	_	Mr. Hamner.	
8	Q.	What about the telephone number?	8	Q.	Okay. Do you any reason what's your basis	
9	Α.	866-94JUICE.	9	_	for not	
10	Q.	Is that a number for US Beverage?	10	A.	Oh, I have no reason to I do not have that	
11	Α.	Not to my knowledge.	11		knowledge that Mr. Hamner produced this or	
12	Q.	Let's flip to the next page.	12		John Walker produced it or a printing company	
13	Α.	Okay.	13	_	produced it. I don't know.	
14	Q.	Have you seen that document before?	14	Q.	Okay. Did US Beverage help pay for the	
15	Α.	Yes, I have.	15 16	Α.	printing costs for these flyers?	
16	Q.	What is this document?	17	Α.	Again, I do not know what participation US  Beverage had on the cost of this piece,	
17	A.	It's a flyer for US Beverage selling Juice	18		whether it was printing or mailing. But I	
18	0	Alive.	19		would have assumed we did have a cost incurred	ń
19	Q.	Who did this document go out to?	20		in printing and mailing these.	-
04	Α.	Again, I did not handle this project. This	21	Q.	But you're just not certain?	
21	0	was under the purview of Mr. Walker.	22	Q. A.	I'm not certain without financial	
22 23	Q.	Well, anyone else in the company aware of the	23	۸.	documentation in front of me.	
	/2006 (	project. 04:11:29 PM Page 193 to		of 380	49 of 123 she	ets

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1	Q.	Okay.	1		Georgia, representing Mr. Walker as to what we
2		(Off-the-record discussion.)	2		believed there should be distribution in.
3	Q.	Let's look at one more document, then we'll	3		At this point in time, May of 2004?
- A.		take a break and lunch. We're going to mark	4	A.	I'm not sure if it was May 2004.
		this as Defendants' 8. And can you if you	5	Q.	And was that letter to the lawyer in Columbus,
6		can identify this document, sir.	6		Georgia, or wherever, was that letter
7		(The referred-to document was	7		referring to the day care juice product?
8		marked for identification as	8	A.	I cannot remember specifically. It had many,
9		Defendants' Exhibit No. 8.)	9		many purposes, I think, if I'm not mistaken.
10	A.	Okay.	10	Q.	Okay. In response to this letter, did you
11	Q.	Okay. Can you identify the document?	11		take any legal action?
12	A.	I believe this to have been a proposal that	12	A.	Did we take legal action?
13		was submitted by John Walker.	13		MR. GILL: Object to the form.
14	Q.	Okay. Have you seen this before today?	14	Q.	I'm just asking if you took legal action. I'm
15	A.	Yeah.	15		not asking
16	Q.	And you've read it before today?	16	A.	I don't understand "took legal action." Did
17	A.	Yes, sir.	17		we consult with our attorneys?
18	Q.	Would you have received it roughly May 24th,	18	Q.	No. I'm asking more firmly than that. Did
19		2004, or a few days afterwards?	19	·	you send a cease and desist to John Walker?
20	Α.	I cannot I cannot remember when I saw it.	20		Did you file a lawsuit?
21	Q.	Do you have any reason to not believe you	21	Α.	No, we did not.
22	Œ.	would have received it sometime after May	22	Q.	Okay. But from this letter, it's clear that
23		24th, 2004?	23	٠.	Mr. Walker has created a his own brand?
23		198	23		200
	A.	No. I have no reason to believe that.	1	Α.	Absolutely.
2	Q.	Okay. Let's look at the fourth arrow or	2	Q.	And is it clear he also was working under this
	Œ.	bullet point.	3	Œ.	company called Trident Marketing?
3	۸	·	4	٨	-
4	Α.	Okay.		A.	At this point, it becomes aware that he is not
5	Q.	And the first line says (As read:) Marketing	5		working on the best interest of US Beverage by
6		services for the 100 percent day care juice	6		trying to charge for the services he should be
7		line in Alabama, Mississippi, and Arkansas.	7	_	providing in the position that he held.
8		Are those states that we were talking about	8	Q.	Is it your point that is it your contention
9		earlier that US Beverage was allocated to sell	9		that at this point in at least as early as May
10		day care juice under Juice Alive brand?	10		of 2004 that Mr. Walker had breached his
11	Α.	My belief that it extended past those	11		fiduciary duties and had committed some sort
12		boundaries.	12		of wrong against US Beverage?
13	Q.	Okay. Based on what?	13	A.	Oh, I do believe that.
14	A.	Well, based on where we had current	14	Q.	And, again, you didn't take any you didn't
15		distribution.	15		have a lawyer send a cease-and-desist letter?
16	Q.	Okay.	16	A.	No. We sought the advice of counsel, and
17	A.	I'm not denying that that proposed this.	17		counsel advised us to take a different path
18	Q.	Okay. Is there some other document that was	18		for resolution.
19		created that out of these discussions that	19	Q.	Okay. And we can't
		would have shown where US Beverage would sell	20		MR. GILL: I'm going to go ahead and
21		these products?	21		advise you not to discuss,
22	A.	I believe there was a document sent to an	22		even though it wasn't with me,
23		attorney in Columbus, Georgia, or Phenix City,	23		any discussions you may have
50 of	123 sh	eets Page 197	to 200 (	of 380	10/04/2006 04:11:29 <sup>MM</sup>

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1	Q.	Was he an attorney for US Beverage?	1		privileged. But I don't know.
2	A.	He is an attorney that US Beverage did use for	2		I have no knowledge
3		this transaction.	3		MR. JACKSON: A document that had
11	Q.	Did he prepare these documents?	4		been sent to Mr. Walker's
1	Α.	He prepared these documents. My belief was	5		attorney?
6		that he had passed them back and forth to a	6		MR. GILL: Well, if it had been sent
7		gentleman, again, in either Phenix City or	7		to Mr. Walker's attorney, no,
8		Columbus. I cannot remember the attorney's	8		I don't, but
9		name, but it was John Walker's counsel at the	9		MR. JACKSON: And we'll inquire with
10		time.	10		his attorney. Maybe his
11	Q.	Okay. Is it your understanding that James	11		attorney had the original
12		Cooper would have drafted these documents?	12		draft sent.
13	Α.	He would have drafted them and then had them			But let me ask you, as to the bottom of
14		reviewed by the other attorney, correct.	14		page Bates-Stamped Page 7, the 200-mile
15	Q.	Did he provide you with the original copies or	15		geographical limitation, who suggested that
16		original drafts of these documents?	16		limitation?
17	A.	That, I could not answer, if they were the	17		I don't know who suggested that. I know that
18		original drafts or not.	18		John Walker and I were both present with
19	Q.	Okay. Can you check with Mr. Cooper? Does he	19		Mr. Cooper when we discussed that mile range.
20	٦.	still do work for the company?	20	Q.	Who suggested the three-year time limitation?
21	Α.	Yes.	21	Α.	Again, John Walker and I were both present.
22	Q.	Do you have reason to believe that he would	22		Don't know that either one of us suggested it
23	-4-	have kept the original drafts of these	23		or that Cooper suggested it. I couldn't
		238			
		200			240
		documents?	1		answer that.
2	Α.		1 2	Q.	answer that.  Okay When did you first become aware of
	A.	documents?		Q.	answer that.  Okay. When did you first become aware of
2	A.	documents?  I have no way to answer that.	2	Q.	answer that.  Okay When did you first become aware of
2 3	A.	documents?  I have no way to answer that.  MR. GILL: Are you asking for an	2 3	Q.	answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker
2 3 4	A.	documents?  I have no way to answer that.  MR. GILL: Are you asking for an original draft that we	2 3 4		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?
2 3 4 5	A.	documents?  I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?	2 3 4 5		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say
2 3 4 5 6	A.	documents?  I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm	2 3 4 5 6		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we
2 3 4 5 6 7	Α.	documents?  I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the	2 3 4 5 6 7		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that
2 3 4 5 6 7 8	Α.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is	2 3 4 5 6 7 8		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan.
2 3 4 5 6 7 8 9	A.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is equivocating about the	2 3 4 5 6 7 8 9		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan to start his own entity. And forgot how I
2 3 4 5 6 7 8 9	Α.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is equivocating about the document stating that it's	2 3 4 5 6 7 8 9		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan to start his own entity. And forgot how I became aware of it. But that he had also
2 3 4 5 6 7 8 9 10	Α.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is equivocating about the document stating that it's been sent to another lawyer,	2 3 4 5 6 7 8 9 10		answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan to start his own entity. And forgot how I became aware of it. But that he had also contacted vendors to have conversations. So
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is equivocating about the document stating that it's been sent to another lawyer, and I guess inferring the other lawyer might have drafted part of the document.  And it's important to know who drafted the document, who drafted what portions, especially the non-compete.  MR. GILL: I think he said it was negotiated between the two	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q.	answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan to start his own entity. And forgot how I became aware of it. But that he had also contacted vendors to have conversations. So it would have been if I knew the if I could if I could look at the date of the SBA closing, I would have some idea of when that was. And I may be wrong. But that You said July. Do you know particular year?  Are you referring to a particular year?  I'm gonna I cannot with without knowing that date, that would be my time line would be
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is equivocating about the document stating that it's been sent to another lawyer, and I guess inferring the other lawyer might have drafted part of the document.  And it's important to know who drafted the document, who drafted what portions, especially the non-compete.  MR. GILL: I think he said it was negotiated between the two lawyers. But, I mean, I think a document in his lawyer's	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Q.	answer that. Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage? Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan to start his own entity. And forgot how I became aware of it. But that he had also contacted vendors to have conversations. So it would have been if I knew the if I could if I could look at the date of the SBA closing, I would have some idea of when that was. And I may be wrong. But that You said July. Do you know particular year? Are you referring to a particular year? I'm gonna I cannot with without knowing that date, that would be my time line would be just after the US Beverage signing of the SBA loan that summer. Okay. What's the next instance of competing
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 21 22 23	A.	I have no way to answer that.  MR. GILL: Are you asking for an original draft that we drafted?  MR. JACKSON: I guess what I'm asking is I'm getting from the witness the witness is equivocating about the document stating that it's been sent to another lawyer, and I guess inferring the other lawyer might have drafted part of the document.  And it's important to know who drafted the document, who drafted what portions, especially the non-compete.  MR. GILL: I think he said it was negotiated between the two lawyers. But, I mean, I think a document in his lawyer's possession would be	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Q. A.	answer that.  Okay. When did you first become aware of actions that you contend show that Mr. Walker was competing against US Beverage?  Competing. I would say that I would say sometime in July it was just after we closed on the SBA loan, was my belief, that Mr. Walker had sought to apply for an SBA loan to start his own entity. And forgot how I became aware of it. But that he had also contacted vendors to have conversations. So it would have been if I knew the if I could if I could look at the date of the SBA closing, I would have some idea of when that was. And I may be wrong. But that You said July. Do you know particular year?  I'm gonna I cannot with without knowing that date, that would be my time line would be just after the US Beverage signing of the SBA loan that summer.

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1		whole list. I thought you said when I was	1		Beverage leads?
2		first made aware.	2	A.	At that point, when we when we had let
3	Q.	Well, I asked when you I asked for the	3		Mr. Walker know that we saw this as an act of
, •		first instance, and we're trying to work our	4		aggression. And we sat down at that trade
		way forward. And then you said you couldn't	5		show in a conference room at a hotel to try to
6		put it in a timeline form. So I just asked	6		work some things out. And, again, it has
7		you generally to list for us.	7		always been our intention to put the business
8	Α.	The Mississippi trade show was a big incident	8		first and protect it, US Beverage, because it
9		we felt of competition. John Walker, in fact,	9		can't speak for itself. So we as corporate
10		brought his agents down for the sole purpose	10		officers have to speak for it, and sometimes
11		of competing directly with us at that trade	11		we do have to put the needs of the company
12		show. Had secured their own booth. And we	12		ahead of our personal needs. And in doing so,
13		were advised to that by the trade show people,	13		we did agree to some things that we felt we
14		and I contacted Mr. Walker about that. I	14		were coerced into for the protection of the
15		said, John, you know, in the middle of these	15		greater good of US Beverage.
16		negotiations, this would be a bad time for you	16		On that date we made what we
17		to create a wedge between our negotiations	17		felt was an amicable good-faith arrangement,
18		that way by blatantly competing with us at an	18		which he breached on many occasions. Did he
19		open trade show.	19		give us leads? We were there are at the show
20	Q.	When did that occur?	20		and got the leads alongside him because he was
21	Α.	It was the Mississippi trade show for last	21		in the booth with us. So did he give us
22	Λ.	year. Probably last last fall sometime.	22		leads? No. He went out and actively bid
23	0		23		against us during that school year and this
23	Q.	Did you lose any sales as a result of this 246	23		248
		alleged competition?	1		school year through his agents.
2	Α.	On that date?	2	Q.	Okay. Now, which school years are we talking
3		Just as a result of what happened	3	Q.	about? You said "that school year." Are you
_	Q.	Oh, yes. We feel that our price point has			referring to 2005/2006?
4	Α.		4	٨	_
5		been driven down by the threat of Mr. Walker	5	Α.	Correct.
6		bidding; the information that he has passed to	6	Q.	Which schools did he bid against you in
7		competitors of ours based on what he calls the	7		2005/2006?
8		Trident Marketing association with Dispensing	8	Α.	And, again, I'll have to I'll have to
9		Systems; we feel that our bids have been	9		look he may not have bid actively in 2005,
10		damaged tremendously. We have lost pieces of	10		but he was making contact in 2006 to create a
11		business due to him creating a competitive	11		path for him to sell to these accounts, which
12		entity. So, yes, we do feel that we've lost	12		would have been the 2005/2006 school year. So
13		business and lost revenues, an enormous amount	13		spring of '06 he was out actively trying to
14		of revenues due to this competition.	14		create a distributor network, and agents for
15	Q.	Could you put a dollar figure on this enormous	15		John Walker doing business as Juice Alive and
16		amount of revenues?	16		Trident Marketing to infiltrate territories
17	A.	I could not today.	17		that US Beverage currently distributed in and
18	Q.	What would it take for you to be able to	18	_	compete with us.
19		quantify this?	19	Q.	What was your response or your company's
	A.	I would need time to go through an account	20		response to these perceived instances of
21		list.	21		competition that you've listed a few minutes
22	_	Did Mr. Walker give you leads that occurred	22		ago?
	Q.	Dia Mr. Warker give you leads that occurred			490.
23	<b>Q.</b> 123 she	during the Mississippi trade show or give US	23	Α.	What was our response? 10/04/2006 04:11:29 PM

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1		dropped that case price actually down to	1	_	I'm just unaware of it.	
2		around 16 or \$17, is my recollection. And I	2	_	This case up-charge of \$1.20 per case for	
3		may be off a little bit.	3		Juice Alive, do you contend that's not a fair	
д.	Q.	How much of the 16 or \$17 per case went to the	4		case up-charge? And I'm not talking about the	
- 6		owner of the Cool Tropics' brand?	5		ownership of the IP, but I'm talking about in	
6	Α.	I think at the time, we agreed to pay we	6		terms of buying a product in the marketplace.	
7		paid it in the form of a margin, like, a	7		You know, whether you're buying Cool Tropics	
8		certain percentage. And I do not recall that	8		or you're buying Juice Alive or some other	
9		percentage. And, again, it was agreed upon	9		some other product in the marketplace that's a	
10		because when we had taken over Tropical	10		slush product that you're paying a case	
11		Perfections, some of that distribution was	11		up-charge to use a brand. Do you contend that	
12		already in place. We felt it was prudent to	12		\$1.20 case up-charge for a case of this juice	
13		keep those customers using that same product	13		product is unreasonable?	3
14		brand name.	14		MR. GILL: Object to form.	
15	Q.	So you can't today tell us what what was	15		I contend it's unreasonable when that brand	
	Q.	the charge for using the brand?	16	A.	should be an internal issue.	
16	۸	-	17	Q.		
17	Α.	No. Not right now I couldn't.		Q.	Again, I'm not asking you I'm not asking	
18	Q.	When you say it was a margin, was it margin	18		you to agree with us as the ownership of the	
19		over and above the 16 or \$17 a case?	19		brand. I'm just asking you in terms of if you	
20	Α.	I think that was inclusive, but, again, I'm	20		were negotiating a case up-charge for Cool	
21		not sure.	21		Tropics or or, you know	
22	Q.	And did Supreme Beverage make the product for	22	Α.	I would find it to be excessive for the	
23		Cool Tropics you were selling?	23		services provided, yes.	
	_	262			264	
1	A.	Well, actually Supreme Beverage manufactured	1	Q.	So if Cool Tropics was charging you \$1.20, a	
2		that product for us, and Cool Tropics agreed	2		case up-charge	
3		to move their business over there with us at	3	A.	We left Cool Tropics because they were	
4	_	the same time.	4		charging us for the up-charge in giving their	
5	Q.	Okay.	5	_	service.	
6	A.	So Supreme and Tom Clark worked on those	6	Q.	Okay. And you don't recall how much they were	
7		products, getting them right, and then Cool	7		charging. Was it more or less than \$1.20 per	
8		Tropics actually in its own distribution	8	_	case?	
9		followed suit and moved to Supreme with us in	9	Α.	I don't recall.	
10		order to gain the same pricing we were	10	Q.	Okay. What about for this other internal	
11		getting, which was better than what they were	11		brand you were talking about, the Harvest	
12		getting.	12		Pure; is that the brand?	
13	Q.	Okay. And we saw earlier Defendants'	13	Α.	Correct.	
14		Exhibit 16, which is we talked about	14	Q.	Did you pay a case up-charge for Harvest Pure?	
15		before, which, basically, informed Gary Dukes	15	A.	I'm going to say, yes, we probably did. I	
16		of the 1.20 increase or the case up-charge.	16		•	1.
17		Would there have been a similar document sent	17	Q.	Do you have any idea?	
18		earlier regarding your relationship with Cool	18	Α.	I do not.	
19	_	Tropics?	19	Q.	Do you think \$1.20 case up-charge for the	
	Α.	I could not state that. I'm not sure.	20		Harvest Pure brand, would that be excessive?	
21	Q.	Is it possible there was a document that was	21	A.	I think at the level that US Beverage has	
22		sent to Supreme informing them of what the	22		obtained, that that is an internal issue and	
23	kaa	case up-charge would be?	23	-F 200	that almost any price that we would pay for	204
66 Of	123 she	eets Page 261 to	204 (	טאב זו	10/04/2006 04:11:29	JAI

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1		Exhibit 24. And, again, these are documents	1 1	0 4	backward to confirm or deny that statement.
2		that were produced by your attorney to me in	2	Q.	The purchase order is dated what?
3		this case. See if you	3	_	12/13/2005.
-		(The referred-to document was	4	_	And the fax from Mr. Clark to Mr. Dukes at
		marked for identification as	5	٠.	Supreme is dated what?
6		Defendants' Exhibit No. 24.)	6	A.	11/18/2005.
7	A.	Okay.	7	_	And based on those two dates, it would be a
8	Q.	Do these appear to be purchase orders for the	8	٦.	good assumption that a case up-charge was paid
9	α.	purchase of Juice Alive products by your	9		for these products that were purchased?
10		company?	10	A.	Again, without documentation of what we paid
11	A.	Yes.	11	,	per case and what the up-charge I can't
12	Q.	And it looks like the vendor is Supreme	12		answer or deny, you know, positively or
13	Œ.	Manufacturing; is that correct?	13		negatively the that statement. I don't
14	Α.	Correct.	14		mean to be evasive. I just don't I don't
15	Q.	Okay. And these are showing some pretty	15		have
16	Q.	significant purchases; is that correct?	16	Q.	Do you deny that your company paid a case
17	A.	I mean, I don't know how significant. \$22,000	17	Œ.	up-charge when it bought Juice Alive products
	A.	-	18		through Supreme?
18	^	is a lot of money to me.	19	A.	
19	Q.	Yeah. I mean, that's what I'm asking. Looks	20	Α.	Do I deny? No, we definitely I would
20	٨	like the first page would be at least \$22,000.	21		believe that throughout the POs that requested
21	Α.	Well, the total is \$22,000 for the entire			the Juice Alive brand, there was some
22	_	purchase order.	22		additional charge at times. Yes, we have
23	Q.	Oh, I'm sorry. So this is all part of the	23		purchased Juice Alive at no charge prior to
		202			284
		282	1		this though
1	٨	same purchase order, then?	1	0	this, though.
2	Α.	same purchase order, then?  It appears to be.	2	Q.	this, though. Any records showing that?
3	A. Q.	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was	2	Q. A.	this, though. Any records showing that? Yeah. There will be purchase orders that
2 3 4	_	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the	2 3 4	A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.
2 3 4 5	_	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase	2 3 4 5	A. Q.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?
2 3 4 5 6	Q.	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?	2 3 4 5 6	A. Q. A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.
2 3 4 5 6 7	_	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?  Without a per-case cost, I could not, without	2 3 4 5 6 7	A. Q.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.  Okay. What business do you contend that
2 3 4 5 6 7 8	Q.	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?  Without a per-case cost, I could not, without a calculator, decipher if there was one placed	2 3 4 5 6 7 8	A. Q. A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.  Okay. What business do you contend that  Mr. Walker has done within a 200-mile radius
2 3 4 5 6 7 8 9	Q.	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?  Without a per-case cost, I could not, without a calculator, decipher if there was one placed on the PO or not.	2 3 4 5 6 7 8	A. Q. A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.  Okay. What business do you contend that  Mr. Walker has done within a 200-mile radius in Montgomery that you contend violates the
2 3 4 5 6 7 8 9	Q.	same purchase order, then?  It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?  Without a per-case cost, I could not, without a calculator, decipher if there was one placed on the PO or not.  But isn't it your understanding that you were	2 3 4 5 6 7 8 9	A. Q. A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.  Okay. What business do you contend that  Mr. Walker has done within a 200-mile radius in Montgomery that you contend violates the non-compete agreement that we were talking
2 3 4 5 6 7 8 9 10	Q.	It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?  Without a per-case cost, I could not, without a calculator, decipher if there was one placed on the PO or not.  But isn't it your understanding that you were paying a case up-charge when you made this	2 3 4 5 6 7 8 9 10	A. Q. A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.  Okay. What business do you contend that  Mr. Walker has done within a 200-mile radius in Montgomery that you contend violates the non-compete agreement that we were talking about earlier today?
2 3 4 5 6 7 8 9 10 11	Q. A. Q.	It appears to be.  Okay. And do you know if a case up-charge was paid to to Trident Marketing off the purchase of these products on this purchase order?  Without a per-case cost, I could not, without a calculator, decipher if there was one placed on the PO or not.  But isn't it your understanding that you were paying a case up-charge when you made this purchase order?	2 3 4 5 6 7 8 9 10 11	A. Q. A.	this, though.  Any records showing that?  Yeah. There will be purchase orders that would confirm that, I'm sure.  Okay. Can you produce those to your attorney?  I'm sure we can.  Okay. What business do you contend that  Mr. Walker has done within a 200-mile radius in Montgomery that you contend violates the non-compete agreement that we were talking about earlier today?  MR. GILL: Object to form. Calls
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1		targeted for sales calls.	1		specific threats to turn over proprietary
2	Q.	Okay. But, again, I'm asking you for any	2		information to anyone else?
3	٠.,	basis of your assertion that Mr. Walker gave		Α.	Not specifically, no.
		proprietary information to Dispensing Systems.		Q.	And other than the threat to bury you, any
- (	Α.	Again	5	٠.	other threats made by Mr. Walker that you
6	Q.	I mean, I know what you're saying, you have	6		haven't told us on the record here today
7	Œ.	suspicions, you have reasons to believe. I'm	7		during this conversation?
8		just asking for facts.	8		MR. GILL: Object to form.
9		MR. GILL: Object to the form.		Α.	During that conversation?
10	Ā.	Well, and again, the fact that they compete		Q.	Yes.
11	Δ.	only predominantly with places that we already		<b>α</b> . Α.	I mean, other than extrapolating on that same
12		have relationships with based on the fact that	12	Λ.	point, that, you know, he would seek to
13		they've purchased from those vendors would	13		compete in the markets with us.
14		lead us to believe that. Based on bid pricing		Q.	Are you aware of any specific business that
15		that they come into the marketplace, would	15	α.	you've lost to Mr. Walker within 200 miles of
		lead us to believe that.	16		Montgomery?
16 17	Q.			Α.	Without an account list in front of me, I
	Q.	Okay. Anything other than that? Any other	18	Λ.	would have to go through that to state
18		information, any statements to you, anything	19		specifically which accounts.
19		else other than what you've just stated that		Q.	
20		leads you to believe	21	Q.	Are you aware of any business that Mr. Walker
21	A.	Only that John Walker had advised me that if			has done within 200 miles of Montgomery in
22		we did not concede to his desires for a	22		which he's sold product that you think
23		greater price and higher buyout price and a 290	23		violates the non-compete or violates his 292
		290			292
		bishayasias on Tuigo Aliyo be upo going to	4		fiducians duty that you allogo?
1		higher price on Juice Alive, he was going to,	1	٨	fiduciary duty that you allege?
2	0	in fact, do that.	2 /	Α.	Well, yes. I believe that any account that
2 3	Q.	in fact, do that. In fact do what?	2 /	Α.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on
2 3 4	Q. A.	in fact, do that. In fact do what? Give proprietary information and try to damage	2 / 3 4		Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.
2 3 4 5	A.	<ul><li>in fact, do that.</li><li>In fact do what?</li><li>Give proprietary information and try to damage</li><li>US Beverage.</li></ul>	2 / 3 4 5 (	A. Q.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling
2 3 4 5 6		in fact, do that. In fact do what? Give proprietary information and try to damage US Beverage. Okay. Is that the exact words that Mr. Walker	2 / 3 4 5 (6	Q.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling any product within the 200-mile radius?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q. A. Q. A. Q. A.	in fact, do that.  In fact do what?  Give proprietary information and try to damage US Beverage.  Okay. Is that the exact words that Mr. Walker used?  Mr. Walker used the words, it's your responsibility to this corporation, Grady, to do the right thing and I'm paraphrasing, so so I I stipulate that. But that it's worth it to you to pay me a higher price to go away than to have me bury you.  Did Mr. Walker make any physical threats to you at that conversation?  On that day?  Yes.  No. Not on that day.	2	Q. A.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling any product within the 200-mile radius?  I'm aware of them attempting to sell product.  The fact that we beat them in the streets is not relevant. The attempt to compete with us and to lower our price did happen.  Well, relevancy is up to the judge and so we're not I mean, what I think is relevant and you think is relevant is irrelevant, so but I'm just asking you specifically as to products sold in the marketplace by Dispensing Systems within 200 miles of Montgomery.  And let me understand what you mean by competition is not just the actual winning.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Q. A. Q.	in fact, do that.  In fact do what?  Give proprietary information and try to damage US Beverage.  Okay. Is that the exact words that Mr. Walker used?  Mr. Walker used the words, it's your responsibility to this corporation, Grady, to do the right thing and I'm paraphrasing, so so I I stipulate that. But that it's worth it to you to pay me a higher price to go away than to have me bury you.  Did Mr. Walker make any physical threats to you at that conversation?  On that day?  Yes.  No. Not on that day.  And when, roughly, did this conversation we're	2	Q. A.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling any product within the 200-mile radius?  I'm aware of them attempting to sell product.  The fact that we beat them in the streets is not relevant. The attempt to compete with us and to lower our price did happen.  Well, relevancy is up to the judge and so we're not I mean, what I think is relevant and you think is relevant is irrelevant, so but I'm just asking you specifically as to products sold in the marketplace by Dispensing Systems within 200 miles of Montgomery.  And let me understand what you mean by competition is not just the actual winning.  And I didn't specifically ask you about
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A. Q. A. Q.	in fact, do that.  In fact do what?  Give proprietary information and try to damage US Beverage.  Okay. Is that the exact words that Mr. Walker used?  Mr. Walker used the words, it's your responsibility to this corporation, Grady, to do the right thing and I'm paraphrasing, so so I I stipulate that. But that it's worth it to you to pay me a higher price to go away than to have me bury you.  Did Mr. Walker make any physical threats to you at that conversation?  On that day?  Yes.  No. Not on that day.  And when, roughly, did this conversation we're just describing occur?	2	Q. A.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling any product within the 200-mile radius?  I'm aware of them attempting to sell product. The fact that we beat them in the streets is not relevant. The attempt to compete with us and to lower our price did happen.  Well, relevancy is up to the judge and so we're not I mean, what I think is relevant and you think is relevant is irrelevant, so but I'm just asking you specifically as to products sold in the marketplace by Dispensing Systems within 200 miles of Montgomery.  And let me understand what you mean by competition is not just the actual winning.  And I didn't specifically ask you about competition within 200 miles. I'm asking the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A. Q. A. Q. A.	in fact, do that.  In fact do what?  Give proprietary information and try to damage  US Beverage.  Okay. Is that the exact words that Mr. Walker used?  Mr. Walker used the words, it's your responsibility to this corporation, Grady, to do the right thing and I'm paraphrasing, so so I I stipulate that. But that it's worth it to you to pay me a higher price to go away than to have me bury you.  Did Mr. Walker make any physical threats to you at that conversation?  On that day? Yes.  No. Not on that day.  And when, roughly, did this conversation we're just describing occur?  This conversation probably occurred prior	2	Q. A.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling any product within the 200-mile radius?  I'm aware of them attempting to sell product. The fact that we beat them in the streets is not relevant. The attempt to compete with us and to lower our price did happen.  Well, relevancy is up to the judge and so we're not I mean, what I think is relevant and you think is relevant is irrelevant, so but I'm just asking you specifically as to products sold in the marketplace by Dispensing Systems within 200 miles of Montgomery.  And let me understand what you mean by competition is not just the actual winning.  And I didn't specifically ask you about competition within 200 miles. I'm asking the specific question of products sold within
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A. Q. A. Q.	in fact, do that.  In fact do what?  Give proprietary information and try to damage US Beverage.  Okay. Is that the exact words that Mr. Walker used?  Mr. Walker used the words, it's your responsibility to this corporation, Grady, to do the right thing and I'm paraphrasing, so so I I stipulate that. But that it's worth it to you to pay me a higher price to go away than to have me bury you.  Did Mr. Walker make any physical threats to you at that conversation?  On that day?  Yes.  No. Not on that day.  And when, roughly, did this conversation we're just describing occur?	2	Q. A.	Well, yes. I believe that any account that Dispensing Systems of Alabama has called on would violate that 200-mile radius.  Are you aware of Dispensing Systems selling any product within the 200-mile radius?  I'm aware of them attempting to sell product. The fact that we beat them in the streets is not relevant. The attempt to compete with us and to lower our price did happen.  Well, relevancy is up to the judge and so we're not I mean, what I think is relevant and you think is relevant is irrelevant, so but I'm just asking you specifically as to products sold in the marketplace by Dispensing Systems within 200 miles of Montgomery.  And let me understand what you mean by competition is not just the actual winning.  And I didn't specifically ask you about competition within 200 miles. I'm asking the

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1		by Dispensing Systems?	лк О 1	_	Or Escambia County Board of Education?
2	Α.	And, again, I would have to defer to some	2		That's what it says.
3	7.	employee questioning and things like that to	3	_	Okay. And just to kind of short circuit the
		go through those. Off the top of my head, I	4		process, are you aware of what relationship
		cannot give you a specific example of them	5		this document has to this present lawsuit?
6			6	Α.	•
6	0	selling a product.	7	Q.	This particular document?  Yes. And, again, this document was produced
7	Q.	Okay. And, again, you've I've asked you		ω.	
8		before if you're aware of any accounts that US	8	Λ.	by your attorney to us, and
9		Beverage has lost within this 200-mile radius	9	Α.	I'm going to have to say again, I
10		of Montgomery as a result of alleged	10		would only I would not know what the
11		competition of Mr. Walker or Trident Beverage.	11	-	significance was specifically at this moment.
12	Α.	There was an account and, again, without	12	Q.	Okay. And we'll just go on and keep going.
13		some account lists in south Mississippi	13		Who is US Beverage's major competitors in the
14		that would have fallen within that, that	14	_	marketplace?
15		Mr. Walker did request bids for to bid against	15	Α.	Today?
16		us. He did not win the bids, and he may have	16	Q.	Today.
17		pulled out of the bid at the last minute, but	17	A.	I would state that currently Ice Makers,
18		it was well within the 200-mile radius.	18		Dispensing Systems. I would see that John
19	Q.	And what county would that be?	19		Walker d/b/a Juice Alive via Scotty West, or
20	A.	Again, I would have to go and defer to some	20		however that is structured. You know, when I
21		account list to get you the specifics on that.	21		hear Juice Alive is bidding against us or
22	Q.	Is that an account that you had for 2005,	22		Juice Alive is trying to get the business, I'm
23		2006, US Beverage?	23		hearing that as a term of a generic term
		294			296
٠,	A.	294 Without that information, I can't I can't	1		296 for a competitor which may be in several
2	A.		1 2		
	A. Q.	Without that information, I can't I can't			for a competitor which may be in several
2		Without that information, I can't I can't fully answer that.	2		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.
2		Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in	2		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower
2 3 4	Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?	2 3 4		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people
2 3 4 5	Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.	2 3 4 5		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind
2 3 4 5 6	Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within	2 3 4 5 6	Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush
2 3 4 5 6 7	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?	2 3 4 5 6 7	Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.
2 3 4 5 6 7 8	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be	2 3 4 5 6 7 8	Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at
2 3 4 5 6 7 8 9	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to	2 3 4 5 6 7 8 9	Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products
2 3 4 5 6 7 8 9 10	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I	2 3 4 5 6 7 8 9		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?
2 3 4 5 6 7 8 9	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.	2 3 4 5 6 7 8 9 10		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con
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2 3 4 5 6 7 8 9 10 11 12 13 14	Q. A. Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)	2 3 4 5 6 7 8 9 10 11 12 13 14		for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document,	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Α.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems.  A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. A. Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. A. Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify that document.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Q. A.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that several brands.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. A. Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify that document.  (The referred-to document was	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q. A. Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that several brands.  a fruit juice I'm sorry.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. A. Q. A.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify that document.  (The referred-to document was marked for identification as	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Q. A.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that several brands.  a fruit juice I'm sorry.  Yes. It's going to be a 50 percent or
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. A. Q. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify that document.  (The referred-to document was marked for identification as Defendants' Exhibit No. 25.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Q. A. Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that several brands.  a fruit juice I'm sorry.  Yes. It's going to be a 50 percent or greater.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. A. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify that document.  (The referred-to document was marked for identification as Defendants' Exhibit No. 25.)  It's a bid submission form.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Q. A. Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that several brands.  a fruit juice I'm sorry.  Yes. It's going to be a 50 percent or greater.  When most people think of Slush Puppie,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. A. Q. Q.	Without that information, I can't I can't fully answer that.  Who won the bid for that particular school in south Mississippi?  I believe US Beverage did.  Okay. Any other any other instances within 200 miles?  And, again, I would have to probably defer to Mr. Clark on almost all of those. He would be much more intimate with that knowledge than I am.  MR. JACKSON: Let me take a five-minute break.  (Brief recess taken.)  I'm going to show you another document, Mr. Kittrell, and ask you if you can identify that document.  (The referred-to document was marked for identification as Defendants' Exhibit No. 25.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Q. A. Q.	for a competitor which may be in several forms, Trident Marketing, Dispensing Systems. A gentleman out of the Tallahassee lower Georgia market. Some various other people representing those products. So it's, kind of that's kind of a generic Slush Puppie.  Is that Slush Puppie like you would see at convenience stores? Is that like the products you see at convenience stores, Slush Puppie?  Well, they have many forms, Vita Pup and so con and so forth. So probably not the C-store product based on who we're running into. I'm going to guess Vita Pup would be more but it's a Slush Puppie brand. They have Is that several brands.  a fruit juice I'm sorry.  Yes. It's going to be a 50 percent or greater.

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1	A.	You know, at one time, Slush Puppie, back when	ո 1		understanding. Some do not.
2		I first got started with this, had 100 percent	2	Q.	Have you recently lost any bids to any of
3		product, I believe. Then they went to a	3	i	these competitors we've just listed?
		50 percent product. So were they perceived to	4	Α.	I would have to go through some notes and talk
		be 100 percent juice? I think it depends on	5		to some salespeople to find out which markets,
6		the market and what particular line that	6		which competitors, which bids. I'm not my
7		distributor really focused on.	7		head is a small attic.
8	Q.	Okay. Well, let's keep any other I	8	Q.	Okay. In your complaint you allege that
9		think you mentioned, is it Ice Makers; is	9		Mr. Walker has caused and continues to cause
10		that	10		you to lose customer sales. How is Mr. Walker
11	A.	Ice Makers.	11		continuing to cause you to lose customer
12	Q.	Dispensing Systems. You've talked about	12		sales?
13		various incarnations of Juice Alive?	13	A.	Well, you know, we view that any reduction in
14	A.	Yeah. Buffalo Rock.	14		price per case on a bid that we won would be ਣ
15	Q.	Buffalo Rock?	15		continual loss. We also contend that any
16	A.	Uh-huh.	16		business that Mr. Walker created using the
17	Q.	Is that the company that also distributes	17		Juice Alive name, which we feel is
18		Pepsi?	18		intellectual property of ours, is business
19	A.	Yeah. They do distribute Pepsi.	19		that we should have had, and it's an ongoing
20	Q.	Okay. And you mentioned Slush Puppie?	20		loss. Then any place that he's created a
21	A.	Correct.	21		competitive situation that has taken business
22	Q.	Any other competitors or major competitors in	22		would obviously be considered a loss. And,
23		the marketplace?	23		again, I would have to go case-by-case through
		298			300
•	A.	There's several others, Sunshine Beverage.	1		a lot of documentation to you know, to give
2		There's several other competitors that may be	2		you specific examples.
3		much of a smaller scale. There's another one	3	Q.	Are you alleging that Mr. Walker, in the
4		out of Pensacola, Florida, Damon's, which	4		various incarnations of Juice Alive, is able
5		touts 100 percent all natural. There's	5		to manipulate the market price for fruit juice
6		several others that we you know,	6		products?
7		different different markets we've we see	7	A.	When you say "manipulate the price," I think
8		different competitors.	8		I'm understanding, but I want to make sure.
9	Q.	Do you bid against these competitors?	9	Q.	Okay. You said a few minutes ago any instance
10	A.	It depends on the market and depends on the	10		where you allege your competition from
11		product.	11		Mr. Walker you get paid less from a
12	Q.	What about for the school segment of your	12		customer
13		business?	13	A.	Uh-huh.
14	A.	Again, depends on the market. Different	14	Q.	you think that's damage. And what I'm
15		markets require bids. Some require just a	15		asking is in terms of doing business in the
16		sales call or a pilot program or different	16		marketplace, is Mr. Walker's company, is it
17		things. So there's obvious ways I'm aware	17		able to set the market price for your product,
18		of some markets where they can put multiple	18		for the juice product.
19		vendors in.	19	A.	I think of if we're in a situation and we
		and a first to the	20		have a relationship with a customer, we have a
	Q.	What about the Mississippi market? Is that a			nave a relationship with a castomer, we have a
21	Q.	market that's bid for schools?	21		price that we've gone in at and he sends a
21 22	Q. A.	• •			

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1		probably force us to have to lower our pricing	1		out selling the same product?
2		to maintain those accounts.	2		MR. GILL: Object to the form.
3	Q.	Well, do any of these other these other	3	A.	Ask me that again.
		competitors we've talked about have any impact	4	Q.	I guess I'm asking that if I'm in the
		on the price in the market as to the sale of	5		marketplace and if I'm trying to buy this
6		fruit juice concentrate?	6		product and I know there's, at least on my
7	A.	Again, I think specifically they are at no	7		sheet here, six or seven companies I could
8		more of an advantage than we are against them.	8		call up and say, hey, I want fruit juice
9		I think the problem comes with John Walker is	9		concentrate; I want to sell frozen lemonade
10		that he does have proprietary knowledge to	10	A.	Okay.
11		know what our costs are going in. He knows	11	Q.	does that not affect the market or fair
12		our financial capabilities; he knows our cost	12		market price of frozen fruit juice
13		per machines; he knows our inventory levels;	13		concentrate?
14		he knows our sales relationships. I think	14	A.	Well, what I would say is that in a lot of
15		that those things do enable him to create more	15		these instances, to be more specific, we would
16		disparity for us than a Slush Puppie or	16		have been considered a sole-source provider in
17		Buffalo Rock to manipulate the market price.	17		some of these markets. And because of the
18	Q.	But let's say if I'm a I own a convenience	18		solicitation by Mr. Walker, you know, we've
19		store and I want to put in a slush machine and	19		had to create an open market situation, which
20		sell some sort of fruit juice concentrate.	20		is not conducive to US Beverage's favor.
21		Let's just say it's some sort of frozen	21	Q.	What do you mean by a sole-source provider?
22		lemonade.	22	A.	Well, there's some of these geographic regions
23	A.	Okay.	23		that we were one of the few people
		302			304
	Q.	Could I call up Ice Makers and get that	1		distributing in those regions and had absence
2		product from Ice Makers?	2		of competition. And in essence, Mr. Walker
3	A.	Could you get that product?	3		created that competition for us. And, again,
4	Q.	Yeah. I'm just talking about a generic frozen	4		as an officer of our corporation and an
5	٠.	lemonade. I'm not talking about anything	5		employee, you know, we just don't feel that's
6	A.	Yeah. I would think they would have something	6		something he should have done. And he knew
7	• ••	similar.	7		these markets. He had proprietary information
8	Q.	What about Buffalo Rock? Could I call them	8		to know which markets they were.
9	٦.	up?	9	Q.	Okay. Which markets are we talking about?
10	A.	I would think they would have something	10	A.	Again, without an account list, I would have
11		similar.	11		to, you know, hold that question back. I
12	Q.	Slush Puppie or Vita Pup?	12		could not answer specifically yet.
13	A.	They would have something similar.	13	Q.	Okay. Are you saying there's parts
14	Q.	Okay. And I could call up your company and	14		let's for instance, let's say Alabama. Are
15		get it?	15		there parts of Alabama that Buffalo Rock won't
16	A.	(Nods head.)	16		service?
17	Q.	What about Damon's out of Pensacola, would	17	A.	Yeah. There's parts of any footprint that
18		they have something similar?	18		certain companies don't distribute to with
19	Α.	Uh-huh.	19		certain products.
	Q.	If I'm buying that product from the	20	Q.	If you were to consult with your records,
			21	*-	
21		marketplace, are you stating that there's not	41		could you provide your attorney a list of
21 22		marketplace, are you stating that there's not an impact on the market value of the product			could you provide your attorney a list of these sole-source provider areas that you're
21 22 23		marketplace, are you stating that there's not an impact on the market value of the product from the fact that there's multiple vendors	22		these sole-source provider areas that you're contending?

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1	A.	Yeah. I think we could sit down and look at a	1		pricing. I can only make assumptions based on
2		lot of these areas that we're contending that	2		where our volume is at in that particular
3		this competition breach happened.	3		category.
А	Q.	And what about like in an area like	4	Q.	Is being a sole-source provider equivalent to
		Montgomery? Is Montgomery considered a	5		being a monopoly in these areas we were
6		sole-source area?	6		talking about earlier?
7	A.	No. It's an open bid.	7	A.	No. Because there's no restriction of trade.
8	Q.	Okay. And when you have an open bid	8	Q.	Okay. In these areas where you're a
9	A.	Well, I'm giving you a term that's not	9		sole-source, could you sell the product for
10		accurate. There are active competitors in the	10		any price you wanted?
11		Montgomery market.	11	A.	No. Because they communicate with other child
12	Q.	Does that affect the price of the fruit juice	12		nutrition directors. They obviously know the
13		product in the Montgomery market?	13		value of the product in the marketplace. You
14	Α.	I would say it would.	14		could not get an excessive or exorbitant
15	Q.	Do you have do you contend Mr. Walker has	15		price, but you may be able to get a more fair
16	٠,	manipulated the price of fruit juice products	16		price based on the low volume that they
17		in the Montgomery market?	17		produce.
18		MR. GILL: Object to form.	18	Q.	And when you're talking about more fair price,
19	A.	In Montgomery, Alabama?	19	٦.	more fair price to who?
20	Q.	Yes.	20	A.	To us to us as a company trying to make a
21	Α.	I feel by the presence of Juice Alive in the	21		profit.
22		hands of Dispensing Systems, it created market	22	Q.	Okay. Not necessarily to the school systems?
23		confusion in the Montgomery market, possibly.	23	Α.	No. I would say in that statement, I'm
		306			308
	Q.	Okay. Are you contending that drove down the	1		talking about, you know, obviously holding our
2		price of fruit juice products in Montgomery?	2		margins as a company driven by profit
3	A.	Yes, I will contend that.	3	Q.	But you said earlier that even in a
4	Q.	Would that have affected the price that Ice	4		sole-source market, they have the capability
5		Makers or Buffalo Rock or Slush Puppie or Vita	5		of finding out what products are being sold in
6		Pup would charge?	6		other areas?
7	A.	No. They're going to bid at what they have to	7	A.	Correct. And they have the right to to
8		bid at.	8		seek out someone who would actually distribute
9	Q.	Is there not a price that the market supports	9		to them if they would engage in that. But,
10		for this particular commodity?	10		again, we feel that and I would have to get
11	A.	Well, the fortunate thing for us is by buying	11		you the documentation that an employee and
12		power, we are buying so with a lot of	12		officer of ours sought to create competition
13		favoritism in the market, and we're able to be	13		in those markets for us.
14		profitable at certain levels. But the	14	Q.	How do you contend that Mr. Walker has
15		presence of this self-made competition through	15		intentionally interfered with your contractor
16		John Walker competing with us in the open	16		business relations? And, again, this comes
17		market has forced us to drive down what we	17		from your complaint. That's one of the
18		would consider reasonable bid prices, yes.	18		allegations against Mr. Walker, that he's
19	Q.	Are you testifying today that you if you	19		interfered with your contract your contract
	-	have an ability to obtain product at a less	20		relations or business relations.
21		cost than a company, for instance, Buffalo	21	A.	Well, Mr. Walker and agents of Mr. Walker and
22		Rock would obtain the same product for?	22		John Walker d/b/a Juice Alive, Juice Alive,
23	A.	I could not I've never seen Buffalo Rock's	23		Trident Marketing, Dispensing Systems, Scotty
	/2006	04:11:29 PM Page 305 to	308 c	of 380	77 of 123 shects

		200			211	
1		Case 2:06-cv-00496-MEF-SRW <sup>309</sup> Ocum West have made contact with customers that w		3-4	Filed 04/15/2007 Page 20 of 24 <sup>311</sup> with contractor relations or	
2		are doing business with. We see that as	2		business relations is	
3		interference. Again, based on the fact that	3		different from breach of	
A		Juice Alive, we feel, is intellectual property	4		fiduciary duty. We talked a	
		of US Beverage. It creates market confusion.	5		lot about fiduciary duty, and	
6		We feel that John Walker was a fiduciary to	6		that's great. But in terms of	
7		the company and that his responsibility should	7		saying	
8		have been to grow our business. Not create	8		MR. GILL: Similar to you and me,	
9		competing entities.	9		but, I mean anyway, ask	
10	Q.	Well, and again, I'm trying to specifically	10		your question again. Maybe I	
11		ask you about interfering with your contractor	11		won't object to it. I'll let	3
12		customer relations, anything that he	12		him go.	
13		Mr. Walker would have done	13	Q.	Okay. And again, I'm asking you and I'm	7.50
14	Α.	Well, for example, currently	14		not asking you about breach of fiduciary	
15	,	MR. GILL: Can you repeat that? I'm	15		duties or any duties as an employee or officer	
16		sorry. Can you repeat that	16		of the company; I'm talking specifically about	
17		question?	17		things that you contend that Mr. Walker has	
18		MR. JACKSON: I'm just asking	18		done to interfere with the contracts or	
19		Mr. Kittrell to recount for us	19		customers or business relationships of your	
20		any instances in which he	20		company.	
21		thinks Mr. Walker has	21	Α.	I guess I'm seeing them as the same. I mean	١.
22		interfered with the contract	22	Λ.	if we have a client and Juice Alive or any of	-7
23		relationships or business	23		its agents are trying to contact that client	
23		relationships of business	20			
		310			312	
		310	1		312	±
,	۸	relationships of US Beverage.	1		to get the business, we see that as	1
2	A.	relationships of US Beverage.  Well, again	2	0	to get the business, we see that as interference.	±
3	A.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a	2 3	Q.	to get the business, we see that as interference. Okay. All right. Well, other than allegedly	±
3 4	A.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've	2 3 4	Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you	i.
3 4 5	A.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's	2 3 4 5	Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or	2
3 4 5 6	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things	2 3 4 5 6		to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other	
3 4 5 6 7	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker	2 3 4 5 6 7	Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and	
3 4 5 6 7 8	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.	2 3 4 5 6 7 8		to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is	
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3 4 5 6 7 8 9 10	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through	2 3 4 5 6 7 8 9 10	A.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd	
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3 4 5 6 7 8 9 10 11 12 13	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through a legal claim discussion now or	2 3 4 5 6 7 8 9 10 11 12 13	A. Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd have to go back to my office and go through, you know, whatever memory bank I have to	or
3 4 5 6 7 8 9 10 11 12 13 14	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through a legal claim discussion now or  MR. JACKSON: Well, I have a right	2 3 4 5 6 7 8 9 10 11 12 13	A. Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd have to go back to my office and go through, you know, whatever memory bank I have to but if I'm not mistaken, that came via some	or
3 4 5 6 7 8 9 10 11 12 13 14 15	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through a legal claim discussion now or  MR. JACKSON: Well, I have a right to ask about your claims. You	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd have to go back to my office and go through, you know, whatever memory bank I have to but if I'm not mistaken, that came via some child nutrition directors or through a	or -
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through a legal claim discussion now or  MR. JACKSON: Well, I have a right to ask about your claims. You know, this is  MR. GILL: You have a right to ask the facts. I mean	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Q.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd have to go back to my office and go through, you know, whatever memory bank I have to but if I'm not mistaken, that came via some child nutrition directors or through a discussion about notes that we had of what we happening in the streets when we consulted with our sales force in the street or our	or -
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Α.	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through a legal claim discussion now or  MR. JACKSON: Well, I have a right to ask about your claims. You know, this is  MR. GILL: You have a right to ask the facts. I mean  MR. JACKSON: I do.  MR. GILL: I think he's given it	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Q.	interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd have to go back to my office and go through, you know, whatever memory bank I have to but if I'm not mistaken, that came via some child nutrition directors or through a discussion about notes that we had of what w happening in the streets when we consulted with our sales force in the street or our delivery drivers.  You didn't hear Scotty West make that comment,	or -
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<b>A</b> .	relationships of US Beverage.  Well, again  MR. GILL: Has he not been through a lot of this? I mean, we've been going at this and he's been explaining the things that he believes Mr. Walker did all day.  MR. JACKSON: Well, I understand that.  MR. GILL: We're just going through a legal claim discussion now or  MR. JACKSON: Well, I have a right to ask about your claims. You know, this is  MR. GILL: You have a right to ask the facts. I mean  MR. JACKSON: I do.  MR. GILL: I think he's given it to you.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Q. A.	to get the business, we see that as interference.  Okay. All right. Well, other than allegedly soliciting business from your clients, do you have any other allegations of interference or any other  Scotty West making comments to food and child nutrition directors that US Beverage is filing for bankruptcy.  Who told you that Scotty West said that?  That has come back to me. And, again, I'd have to go back to my office and go through, you know, whatever memory bank I have to but if I'm not mistaken, that came via some child nutrition directors or through a discussion about notes that we had of what we happening in the streets when we consulted with our sales force in the street or our delivery drivers.  You didn't hear Scotty West make that comment, did you?	or -
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shareholders meeting to anact that for everyone so that we could sit down officially a and talk about it.  Q. Okay. And this the purpose of this e-mail, with the was attached into the discovery in this case by your lawyer, was, basically, to call a shareholders meeting; is that correct?  Q. And, again, this is dated December 8th, 2004; last tacorrect?  Q. And, again, this is dated December 8th, 2004; last tacorrect?  A. It was to call a shareholder meeting, correct.  Q. And, again, this is dated December 8th, 2004; last tacorrect?  Q. Chay. Let's talk some more about Julce Alive without everyone's consent or vote.  Q. Okay. Let's talk some more about Julce Alive mame?  Q. Okay. Let's talk some more about Julce Alive mame?  Q. Oby u know when it was created? Any idea?  Q. Did Mr. Walker and Ryan Hammer.  Q. Oby u know when it was created? Any idea?  Q. Did Mr. Walker tell you that he intended to seek a federal trademark for the Julce Alive and you contend that some formation passing. He never submitted a letter to me, nor any documentation stating, I'm going to register this under the name of Trident Marketing or John Walker or Ryan Hamner.  Q. Okay. I'm sking you about conversations in passing. He never submitted a letter to me, and receive the contend of the fine of the pulce Alive in which Mr. Walker the haden of the pulce Alive in which Mr. Walker to have used a federal trademark for the Julce Alive in which Mr. Walker to have used to the creation of the firm of the development of Julce Alive in which Mr. Walker to have used to the creation of the Julce Alive in the development of Julce Alive in which Mr. Walker to have used to the creation of the Julce Alive in the development of the term of the			Case 2:06-cv-00496-MEF-SRW 32Docume	nt 3	3-4	Filed 04/15/2007 Page 21 of 24 323
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20 Q. Do you know when it was created? Any idea? 21 A. On or about March of '04, maybe. 22 Q. Did Mr. Walker tell you that he intended to seek a federal trademark for the Juice Alive 23 seek a federal trademark for the Juice Alive 24 name? 25 A. Mr. Walker may have had those discussions in passing. He never submitted a letter to me, and a selling direct door to door to customers. 26 A. Mr. Walker may have had those discussions in passing. He never submitted a letter to me, and selling direct door to door to customers. 26 A. Mr. Walker may have had those discussions in passing. He never submitted a letter to me, and selling direct door to door to customers. 27 A. Any other funds that you allege that US Beverage spent in the development of Juice Allve? 28 A. I received no documentation on that. Beverage spent in the development of Juice Allve? 29 Q. Okay. 7 A. Again, I would have to search the check register to see if there was any others. 30 Q. Okay. 7 A. Again, I would have to search the check register to see if there was any others. 31 Q. Okay. 7 A. Again, I would have to search the check register to see if there was any others. 32 Do you have any other do you have any others. 33 Alive brand or logo? 44 A. I do not remember specific conversations, but I will state that John Walker has probably in passing mentioned that he would register that trademark. 46 A. I do not remember specific conversations, but trademark. 47 C. Okay. Do you have any concept drafts with the logo, drafts of the logo as they were being worked on; do you have any of those? 48 A. I'm not saking about what John has. I'm of US Beverage. 49 Well, I'm not asking about what John has. I'm asking about what US Beverage has.		Α.				
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7 A. Again, I would have to search the check 8 A. I received no documentation on that. 9 Q. Okay. I'm asking you about conversations you 10 remember. Do you remember any conversations 11 in which Mr. Walker told you that he intended 11 in which Mr. Walker told you that he intended 12 A. Documents related to the creation of the Juice 13 Alive 14 A. I do not remember specific conversations, but 15 I will state that John Walker has probably in 16 passing mentioned that he would register that 17 trademark. 18 Q. Did that concern you when he told you he was 19 going to register the trademark? 19 A. To be honest, again, I thought he was working 20 on our behalf and would never have guessed 21 that he wasn't going to register it on behalf 22 Q. Well, I'm not asking about what US Beverage has.	5		register this under the name of Trident	5		Beverage spent in the development of Juice
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13 of the term "Juice Alive."  14 A. I do not remember specific conversations, but I will state that John Walker has probably in passing mentioned that he would register that trademark.  15 passing mentioned that he would register that trademark.  16 passing mentioned that he would register that trademark.  17 logo, drafts of the logo as they were being worked on; do you have any of those?  18 Q. Did that concern you when he told you he was going to register the trademark?  19 A. Well, no. John would have been privy to all of that because that was a project that he was on our behalf and would never have guessed that he wasn't going to register it on behalf of US Beverage.  20 Q. Well, I'm not asking about what John has. I'm asking about what US Beverage has.	11		in which Mr. Walker told you that he intended	11		Alive brand or logo?
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passing mentioned that he would register that trademark.  17	14	A.	I do not remember specific conversations, but	14	Q.	Yes.
trademark.  17 logo, drafts of the logo as they were being  18 Q. Did that concern you when he told you he was 18 worked on; do you have any of those?  19 going to register the trademark?  19 A. Well, no. John would have been privy to all  20 of that because that was a project that he was  21 on our behalf and would never have guessed 22 that he wasn't going to register it on behalf 23 of US Beverage.  24 Use logo, drafts of the logo as they were being  26 worked on; do you have any of those?  27 Of that because that was a project that he was  28 in charge of working on.  29 Q. Well, I'm not asking about what John has. I'm  20 asking about what US Beverage has.	15		I will state that John Walker has probably in	15	A.	I'm not sure I understand that.
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23 of US Beverage. 23 asking about what US Beverage has.					Q.	-
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1	A.	Well, what I'm saying, that would I would	1		door.	·
2		see that as property of US Beverage that he	2	Q.	Did US Beverage do any advertising other than	
3		has in his possession.	3		what you've just mentioned of the Juice Alive	
A	Q.	And I understand we have differing points of	4		name?	
		view on that. I'm asking specifically as to	5	A.	I would have to confer with other team members	5
6		any records US Beverage currently has. Not	6		to give you an accurate answer on that.	
7		talking about any records that John Walker may	7	Q.	Okay. And the mailer you described, is that	
8		have. And I'll give you your stipulation that	8		the day care juice mailer we talked about	
9		you might claim some of John Walker's records.	9		earlier this morning?	
10		But any records that your company has in its	10	A.	Yes, it is.	
11		possession now.	11	Q.	Any other mailer other than day care juice	
12	A.	I would say that the earliest drafts we would	12		mailer?	
13		have seen would have been probably label	13	A.	Again, I would have to confer with team	
14		proofs, maybe, or some things like that.	14		members to see what else was done on behalf	
15	Q.	Do you have any of those in your records now?	15	Q.	You mentioned cut sheets. For people that	
16	Α.	In my personal files, I do not. But there may	16		aren't in your industry, what are cut sheets?	
17		be some in someone else's files.	17	A.	A cut sheet would be a technical specification	
18	Q.	Can you search your company records for those?	18		data sheet.	
19	Α.	Yeah. We'll be glad to do that.	19	Q.	Is that just giving data about the product?	
20	Q.	What about any meeting notes discussing the	20	A.	Well, that, and it's a promotional piece in	
21	α.	development of a logo or the name Juice Alive?	21		our industry. You use that as a marketing	
22	A.	Again, we you know, John was charged with	22		tool.	
23	Λ.	that in the capacity that he served. He was	23	Q.	Were the Juice Alive flyers that we talked	
23		326		Ψ.	328	
		free to work on that project without having to	1		about for the mailer created by Ryan Hamner?	
2		consult with us for every step of the way.	2	A.	Again, I'm not sure. John Walker handled that	
3	Q.	When did US Beverage first sell any product	3	۸.	project.	
4	Q.	bearing the Juice Alive name?	4	Q.	When you say, going door to door, are you	
5		bearing the falce Alive name:	•	α.	Which you say, going door to door, are you	
J	Δ	Again I would have to go to sales records to	5		talking about like visiting convenience	
6	Α.	Again, I would have to go to sales records to	5		talking about, like, visiting convenience	
6		give you a definite answer on that.	6		stores, or what are you talking about going	
7	A. Q.	give you a definite answer on that.  Can you do that and get back with your	6 7	Δ	stores, or what are you talking about going door to door?	
7 8	Q.	give you a definite answer on that.  Can you do that and get back with your attorney?	6 7 8	A.	stores, or what are you talking about going door to door?  Well, any client that could potentially use	
7 8 9		give you a definite answer on that.  Can you do that and get back with your attorney?  Yes.	6 7 8 9		stores, or what are you talking about going door to door?  Well, any client that could potentially use the product.	
7 8 9 10	Q.	give you a definite answer on that.  Can you do that and get back with your attorney?  Yes.  (Off-the-record discussion.)	6 7 8 9 10	A. Q.	stores, or what are you talking about going door to door?  Well, any client that could potentially use the product.  So that would be schools or convenience	
7 8 9 10 11	Q. A.	give you a definite answer on that.  Can you do that and get back with your attorney?  Yes.  (Off-the-record discussion.)  (Brief recess taken.)	6 7 8 9 10 11	Q.	stores, or what are you talking about going door to door?  Well, any client that could potentially use the product.  So that would be schools or convenience stores?	
7 8 9 10 11 12	Q.	give you a definite answer on that.  Can you do that and get back with your attorney?  Yes.  (Off-the-record discussion.)  (Brief recess taken.)  How did Juice Alive how was it marketed by	6 7 8 9 10 11		stores, or what are you talking about going door to door?  Well, any client that could potentially use the product.  So that would be schools or convenience stores?  Anywhere the product could be used, that they	
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1		John Walker to handle.	1	A.	Fruzers.
2	Q.	When did you first become aware of Mr. Walker	2	Q.	slush? Fruzers. Okay. When was that
3		having filed a trademark application listing	3		brand created?
A		Trident Marketing as the owner of Juice Alive?	4	A.	Tom Clark was in charge of that project. I
	A.	Honestly?	5		would have to defer that to him.
6	Q.	Yes.	6	Q.	Well, when did you first become aware yourself
7	A.	Upon discovery of the documents you turned	7		as president of US Beverage that US Beverage
8		over to me, I believe, was the first time I	8		was selling a product called Fruzers?
9		saw a trademark filing on it.	9	A.	It would have been '06.
10	Q.	Is that the first time anybody at US Beverage	10	Q.	Okay. This year; right?
11		would have known about that?	11	A.	February, maybe. February was the first
12	A.	I would say no.	12		inception of it, maybe.
13	Q.	Didn't your lawsuit contain a request to have	13	Q.	Did your company hire anyone to help it
14		the federal court strike the trademark	14		develop this brand?
15		registration to Trident Marketing for the	15	A.	Yes, we sought outside consultation.
16		Juice Alive?	16	Q.	What did you consult with?
17	A.	You said you said what was my first seeing	17	A.	BLR.
18		of that document, was on that time. I was	18	Q.	BLR?
19		aware through Tom Clark that that	19	A.	Uh-huh.
20		trademark had been that there was some sort	20	Q.	Where is BLR located?
21		of trademark situation there.	21	A.	Birmingham, Alabama, which was the original
22	Q.	I'm sorry for confusing you, but when did you	22		firm that we had consulted with, with
23		first become aware through any source of a	23		Mr. Walker.
		330			332
		330			
		trademark being issued to Trident Marketing	1	Q.	Okay. When when was this original
. 2		risk "	1 2	Q.	Okay. When when was this original consultation you're talking about?
2 3	Α.	trademark being issued to Trident Marketing		Q. A.	Okay. When when was this original
	A. Q.	trademark being issued to Trident Marketing for the Juice Alive name?	2	A.	Okay. When when was this original consultation you're talking about?  Shortly after the acquisition of Tropical Perfections.
3		trademark being issued to Trident Marketing for the Juice Alive name?  I couldn't give you a specific date on that.  But I assume it predated your lawsuit?  Yeah. Absolutely.	2		Okay. When when was this original consultation you're talking about?  Shortly after the acquisition of Tropical Perfections.  Did you pay BLR any money to help develop this
3	Q.	trademark being issued to Trident Marketing for the Juice Alive name?  I couldn't give you a specific date on that.  But I assume it predated your lawsuit?	2 3 4	A. Q.	Okay. When when was this original consultation you're talking about?  Shortly after the acquisition of Tropical Perfections.  Did you pay BLR any money to help develop this brand, Fruzers brand.
3 4 5	Q. A.	trademark being issued to Trident Marketing for the Juice Alive name?  I couldn't give you a specific date on that.  But I assume it predated your lawsuit?  Yeah. Absolutely.  Okay. You don't know how many whether it's months or years?	2 3 4 5	A. Q. A.	Okay. When when was this original consultation you're talking about?  Shortly after the acquisition of Tropical Perfections.  Did you pay BLR any money to help develop this brand, Fruzers brand.  There have been some fees associated with it.
3 4 5 6	Q. A.	trademark being issued to Trident Marketing for the Juice Alive name?  I couldn't give you a specific date on that.  But I assume it predated your lawsuit?  Yeah. Absolutely.  Okay. You don't know how many whether it's months or years?  You know, again, I could not. I think that I	2 3 4 5 6	A. Q. A. Q.	Okay. When when was this original consultation you're talking about?  Shortly after the acquisition of Tropical Perfections.  Did you pay BLR any money to help develop this brand, Fruzers brand.  There have been some fees associated with it.  Do you have any idea what the fees would run?
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		Case 2:06-cv-00496-MEF-SRW 33Docume	nt 3	3-4	Filed 04/15/2007 Page 24 of 24 <sup>335</sup>
1		been paid to BLR?	1	,	(The referred-to document was
2	Α.	I would say Tom Clark would know.	2		marked for identification as
3	Q.	Okay. Why did your company decide to create	3		Defendants' Exhibit No. 28.)
J	Q.	the Fruzers brand?	4	A.	Okay.
1,	Α.	We felt that with the Juice Alive situation,	5	Q.	Okay. Would you characterize this as a
c	Α.	that there was market confusion, and we felt	6	٠.	cease-and-desist letter?
6 7		that the behavior of an officer and employee	7	A.	Not being an attorney, I wouldn't know how to
		of ours in misrepresenting that brand was	8	<i>,</i>	characterize it, to be honest.
8			9	Q.	Let's look at the fourth paragraph of that
9	0	causing damages.  Well, has the Fruzers brand been successful?	10	٠.	letter and ask you to read that sentence
10	Q.	·	11		starting with the word "accordingly."
11	Α.	We feel it's been very successful.	12	A.	Okay.
12	Q.	Are you happy with the Fruzers brand?	13	Q.	Read it aloud, please, for the record.
13	A.	We're happy with the distribution and sale of	14	A.	(As read:) Accordingly, US Beverage asks that
14	_	the products that we sell.	15	Λ.	Trident Marketing and John Walker cease and
15	Q.	Do you plan to continue using Fruzers as the	16		desist from using the brand name Juice Alive,
16		brand.	17		as it is property of US Beverage.
17	Α.	I would say at this point that is our	18	Q.	And having read that sentence, would you
18	_	marketing strategy.		Q.	consider this to be a cease-and-desist letter
19	Q.	If you were to be successful in this case and	19		
20		be awarded Juice Alive, do you plan to stop	20		that was sent by attorneys for US Beverage to
21		using Fruzers and start using the Juice Alive	21		John Walker and his company, Trident
22		name?	22	Δ.	Marketing?
23		MR. GILL: Object to form.	23	Α.	Yes.
		224			336
	121	334	4	0	336
	A.	I would have to again, that would be a	1	Q.	And, again, did you ask did your attorneys
. 2	A.	I would have to again, that would be a meeting that our team as a marketing team and	2	Q.	And, again, did you ask did your attorneys ask on behalf of US Beverage that Trident
3	A.	I would have to again, that would be a meeting that our team as a marketing team and sales-driven team would have to meet on at	2	Q.	And, again, did you ask did your attorneys ask on behalf of US Beverage that Trident  Marketing and John Walker cease using the name
3 4	A.	I would have to again, that would be a meeting that our team as a marketing team and sales-driven team would have to meet on at that time and juncture. If it's 20 years from	2 3 4		And, again, did you ask did your attorneys ask on behalf of US Beverage that Trident  Marketing and John Walker cease using the name  Juice Alive?
3 4 5	A.	I would have to again, that would be a meeting that our team as a marketing team and sales-driven team would have to meet on at that time and juncture. If it's 20 years from now, if it's two days from now there would	2 3 4 5	A.	And, again, did you ask did your attorneys ask on behalf of US Beverage that Trident  Marketing and John Walker cease using the name Juice Alive?  Yes.
3 4 5 6	A.	I would have to again, that would be a meeting that our team as a marketing team and sales-driven team would have to meet on at that time and juncture. If it's 20 years from now, if it's two days from now there would be too many variables for me to even	2 3 4 5 6		And, again, did you ask did your attorneys ask on behalf of US Beverage that Trident  Marketing and John Walker cease using the name  Juice Alive?  Yes.  Did they have direction did your attorneys
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